DOCUMENT RESUME

ED 200 670 UD 021 315

TITLE In the Matter of the Board of Education of the City of Trenton, Mercer County. Commissioner of Education Decision.
INSTITUTION New Jersey State Dept. of Education, Trenton.
PUB DATE [79]
NOTE 103p.

EDRS PRICE MF01/PC05 Plus Postage.
DESCRIPTORS Affirmative Action; Bilingual Education; *Boards of Education; *Compliance (Legal); Disabilities; Educational Administration; Educational Discrimination; Educational Facilities; Educational Finance; *Educational Legislation; Elementary Secondary Education; Employment Practices; *Equal Education; Ethnic Discrimination; Hearings; Puerto Ricans; *School Districts; Special Education; State Boards of Education; State Legislation
IDENTIFIERS New Jersey; *Trenton Public Schools NJ

ABSTRACT

This is a review of a case considered by the New Jersey Commissioner of Education regarding charges brought by the Puerto Rican Congress and Council of Puerto Rican Organizations against the Trenton, Mercer County, Board of Education. The Commissioner of Education evaluated the Trenton Board's performance in adhering to State laws in the following areas: (1) special education programs for handicapped children; (2) affirmative action plans; (3) provision of safe and suitable school facilities; (4) bilingual education programs; (5) the submission of required reports to the Commissioner; and (6) the efficiency of administrative procedures, the sufficiency of the 1978-79 school budget, and the employment of teaching staff members. The Commissioner's evaluation found that the Trenton Board had failed to meet State legal requirements in each of these areas. Recommendations for corrective action were offered for consideration by the State Board of Education. (APM)

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IN THE MATTER OF THE BOARD OF :
EDUCATION OF THE CITY OF :
TRENTON, MERCER COUNTY. :
:

COMMISSIONER OF EDUCATION

DECISION

U.S. DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
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IN THE MATTER OF THE	:	
BOARD OF EDUCATION OF THE	:	
CITY OF TRENTON, MERCER	:	INITIAL DECISION
COUNTY.	:	
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OUTLINE

		PAGES
I.	INTRODUCTION	1-8
II.	SPECIAL EDUCATION PROGRAMS FOR HANDICAPPED CHILDREN	8-16
III.	AFFIRMATIVE ACTION PLANS	16-23
IV.	SCHOOL FACILITIES	23-27
V.	BILINGUAL EDUCATION PROGRAM	28-35
VI.	SUBMISSION OF REPORTS	35-37
VII.	EFFICIENT ADMINISTRATIVE PROCEDURES SUFFICIENCY OF 1978-79 SCHOOL BUDGET EMPLOYMENT OF TEACHING STAFF MEMBERS	37-76
VIII.	MOTIONS TO DISMISS AND FOR SUMMARY JUDGMENT	76-77
IX.	SUMMARY AND RECOMMENDATION	77-87

IN THE MATTER OF THE :
BOARD OF EDUCATION OF THE :
CITY OF TRENTON, MERCER : INITIAL DECISION
COUNTY. :
:

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This matter was opened by the issuance of an Order to Show Cause by the Commissioner of Education on February 5, 1979, to the Board of Education of the City of Trenton, hereinafter "Board," requiring the Board and its Superintendent to show cause why the Commissioner should not exercise his broad supervisory powers to take appropriate action to insure that a thorough and efficient system of public schools be operated within the local district in accordance with the mandate of Article VIII, Section 7, Paragraph 1 of the New Jersey Constitution, as well as general and specific statutory requirements in Title 18A, Education.

Specifically, the Order alleges, inter alia, the failure of the Board to: (1) establish and maintain adequate

programs in bilingual education for all pupils enrolled in the public schools who possess limited English-speaking ability; (2) provide adequate programs of special education, including facilities, for all handicapped or potentially handicapped pupils; (3) adopt and implement an appropriate affirmative action plan for the school district; (4) revise and implement an approved school budget for the 1978-79 school year in order to avoid a fiscal deficit at the close of the school year; (5) adopt and implement efficient administrative procedures for the care, management and operation of the public schools within its charge, and (6) employ and assign adequate, appropriately certified teaching staff members based upon the instructional needs of the district and each school within the district.

In addition, the Order asserts that the process of evaluation of the district, pursuant to the provisions of N.J.S.A. 18A:7A-10 and other relevant school laws, has resulted in the identification of the Board's failure to: (a) provide opportunities for exceptionally gifted and talented pupils (N.J.A.C. 6:8-3.5); (b) ensure safe, adequate and suitable school facilities (N.J.A.C. 6:8-4.8); and (c) have approved, employ and assign qualified aides (N.J.A.C. 6:8-4.3 and 6:11-4.9).

Hearing in this matter was conducted on March 5, 6, 13, 15 and 21, 1979, by the Assistant Commissioner of Education, Division of Controversies and Disputes, at the request of the Commissioner and with the consent of the Director and Chief Judge of the Office of Administrative Law.

Prior to the first day of hearing, a Notice of Motion to Intervene with Brief was filed pursuant to N.J.A.C. 6:24-1.7 and R.4:33-1, 2 by the Puerto Rican Congress and Council of Puerto Rican Organizations, requesting leave to intervene in that portion of the proceedings relating to the Board's alleged failure to provide adequate programs in bilingual education to pupils enrolled in the district's various public schools who possess limited English-speaking abilities. The Puerto Rican Congress, a nonprofit organization with its principal office in Trenton, is an organization which includes in its membership Puerto Rican parents who are residents of the State of New Jersey and have children enrolled in the public schools of Trenton, as well as other school districts of the State. The Council of Puerto Rican Organizations is an association, with offices in Trenton, which serves as the representative body of twelve Trenton-based associations whose members include Puerto Rican parents who are residents of the City of Trenton and have children enrolled in the district's public schools. Both of these organizations have primary interests in furthering the improvement of educational programs and assurance of equal educational opportunities for all pupils with limited speaking abilities in English and particularly for Puerto Rican and other Spanish-speaking pupils. Oral argument was heard on the Motion to Intervene on the first day of hearing, March 5, 1979. Assurances were given by the proposed intervenors that no delay in the proceedings would be occasioned by their participation if such permission were granted. Clearly, the interests of the

proposed intervenors in this instance overlap the interests of the State. They have, however, demonstrated in a timely manner a substantial and specific interest, the disposition of which in the instant matter could establish a precedent which could impede the assertion of such interests in a subsequent, separate proceeding. Also the principle of judicial economy supports the granting of the Motion, in order to avoid litigation of the identical issue in a separate petition of appeal to the Commissioner. For the foregoing reasons permission to intervene in the aforementioned specific issue of the proceedings was granted by the Assistant Commissioner. Yi et al. v. Burke et al., Docket No. A-540-76 Order allowing Intervention New Jersey Superior Court, Appellate Division, May 25, 1977, Stay dissolved July 12, 1977

Subsequent to the close of the hearing, the State, the respondent Board and the Intervenor filed Briefs. The Assistant Commissioner requested and received additional exhibits which consisted of minutes of the special meeting of the Trenton Board of Education held July 7, 1977 (P-56), and the minutes of the regular meetings held August 23, 1977 (P-57) and February 27, 1979 (P-58). Each of these exhibits contains discussion by the Board of its proposed affirmative action plan. The Assistant Commissioner also requested and received the bound volumes of the Board's official minute books covering the period of time encompassed by the record of these proceedings.

The State presented thirteen witnesses and a large number of documents were received and marked in evidence. At the

conclusion of the presentation of the State's case, the respondent Board offered and argued a Motion to Dismiss and, in the alternative, a Motion for Summary Judgment in its favor. Both Motions will be considered, post. The Board did not present any witnesses nor offer any other evidence in its behalf.

The issues dealt with in these proceedings shall be considered seriatim in the order in which they were presented during the hearing. A recitation of the overall chronology of events is essential for an understanding of the case.

During 1977 the Department of Education received a series of informal complaints from citizens regarding the operation of several educational programs in the Trenton School District. More importantly, several bureaus and offices within the Department, which are charged with supervisory functions of specific types of educational programs offered by local school districts, reported to the Commissioner that there appeared to be serious deficiencies in the school district. The Mercer County Superintendent of Schools furnished similar information to the Commissioner. Accordingly, the Commissioner directed more intensive monitoring, investigation and review of the operation of the Trenton school system during the 1977 calendar year.

As the result of this review, the Department issued a report under date of January 31, 1978 (P-1) which specified numerous deficiencies in the operation of programs of special education for handicapped pupils, the local and State supported bilingual education program, the non-standard English component of Title I of the federal Elementary and Secondary Education Act

(E.S.E.A.), the E.S.E.A. Title VII Bilingual Education program, and the E.S.E.A. Title I program. This report also contained the results of an examination of the district's fiscal records and practices for the period July 1, 1977 through November 30, 1977. The findings of this fiscal review went beyond the issues of the district's special education, bilingual education and E.S.E.A. Title I programs. A major finding of the fiscal review was a projected deficit of $670,542 by June 30, 1978, in the Board's current expense account, as the result of projected revenue shortages of $305,066 and projected overexpenditures totaling $365,477 (P-1).

The deficiencies specified in this report were of a serious nature, but are too numerous to duplicate here. It suffices to say that this report documented ample deficiencies to enable the Commissioner to take corrective action by requiring the Board to submit a remedial plan to correct deficiencies and comply with existing statutory requirements and regulations. N.J.S.A. 18A:7A-14

The Board submitted a response under date of February 10, 1978 to the Department's report of January 31, 1978 (P-1). A remedial plan was then submitted to the Commissioner on February 16, 1978. Both of these documents, the Board's response and remedial plan, were reviewed by the Commissioner and staff members of the Department of Education.

The Commissioner addressed a communication dated March 8, 1978 (P-59) to the Superintendent of Schools, with

copies to all Board members, as well as the Mercer County Superintendent and the assistant county superintendent, enclosing a nineteen page document which was the Department's response as the result of the review of the Board's documents submitted on February 10 and 16, 1978. (P-60) The Commissioner's letter advised the district that its previous submissions were not totally adequate and further notified the district that he had appointed a special task force of Department and county office staff to monitor and assist the school district's efforts to complete and implement an acceptable remedial plan. Although the Commissioner's letter of March 8, 1978, and the Department's response of the same date were not offered in evidence, these documents are in the official files of both the Board and the Department and are well known to the parties. Accordingly, judicial notice is taken of both documents, the parties having been duly notified.

On March 24, 1978 the Board submitted to the Commissioner its required remedial plan with a letter of transmittal (P-2). The letter states that the remedial plan was developed by the district's administrative staff with the advice and assistance of the Commissioner's task force and was approved by the Board at a public meeting held at 8:00 p.m. on Wednesday, March 22, 1978. (P-2) This remedial plan is a forty-two page document which sets forth specific proposed actions to remedy reported deficiencies in the Board's special education, bilingual education and E.S.E.A. Title I programs, as well as proposed remedies for the 1977-78 budgetary problems. Attached are two addenda, one comprising lists of pupils with their scores on the

English language proficiency test and oral English rating sheet, and the other two consisting of a three page proposed long-range plan for the bilingual education program.

Although the Commissioner's task force was withdrawn from the district during October 1978, the district's activities were still the subject of continuous monitoring by staff from the Department and county office.

The subsequent monitoring and on-going evaluation process led the Commissioner to the conclusion that the Board had failed to effectuate fully the terms of the remedial plan in accordance with the planned time schedule, and to cure certain other long-standing deficiencies. Accordingly, the Commissioner issued the herein Order to Show Cause, which was returnable March 5, 1979. N.J.S.A. 18A:7A-14

SPECIAL EDUCATION PROGRAMS FOR HANDICAPPED CHILDREN

The Board's remedial plan (P-2) proposes actions to correct fourteen deficiencies, some of which are multiple, which were specified in the Department's report of January 31, 1978 (P-1). The Board's proposed measures for remediation are set forth in pages 1 through 18 of its plan (P-2). Both the State's list of deficiencies and the Board's proposed remedial action are too extensive to be duplicated herein. It suffices to say that a number of the deficiences were corrected and the remaining major deficiencies are those enumerated in the Show Cause Order. It is these three major deficiencies which shall be considered next.

One of the major deficiencies in special education concerns the elimination of the backlog of the number of pupils requiring review, classification and the determination of educational needs.

One of the State's witnesses was the director of the Bureau of Pupil Personnel Services, Branch of Special Education, Division of School Programs. This witness served as a member of the team for the Branch of Special Education and Pupil Personnel Services which visited the Trenton School District in May 1977 and prepared a comprehensive evaluation of the district's program of special education. (Tr. I-8)

In November 1977 he again visited the district to review and evaluate the district's response to the Department's report of the May 1977 evaluation. During March 1978 this witness was assigned to the Commissioner's task force, in which capacity he assisted the school officials in the Trenton district in the preparation of the remedial plan. Until the task force was withdrawn in October 1978, he assisted the district's personnel in the implementation of the remedial plan. During this period from March to October 1978, he spent an average of two to three days per week in the school district. (Tr. I-9) On November 16, 1978 he visited certain schools in the district, and during February 1979 he again spent three days in the district. (Tr. I-9)

The director testified that the school district did not have properly operating resource rooms in its respective schools

for handicapped children for whom such facilities were intended, even though he and a supervisor from the county superintendent's office had intervened and visited the five junior high and one senior high schools with a local school official in order to locate adequate classroom space. (Tr.I-23-25) He testified that he had advised the senior administrators, the director of special pupil services and the Board regarding inadequacies of classroom space for resource rooms. (Tr. I-50) At that time, the district had sixteen resource rooms, two in each of the five junior high schools and six in the senior high school. (Tr. I-44)

He further testified that he had a conference during his February visit with the district's director of special pupil services and a representative of each of the district's child study teams (CST). During this conference, the representatives from each CST filled out a form indicating the number of cases of individual pupils requiring a review and evaluation which were pending at that time. These nine forms (P-3) show that a total of 331 cases were pending before the CSTs. He defined this backlog as consisting of both new referrals to the CSTs, as well as required reevaluations of pupils who had been classified as handicapped three years earlier. State Board regulations require a reevaluation after three years for all pupils classified as handicapped. N.J.A.C. 6:28-1.6(p) The regulations also provide that each evaluation and classification, if so determined, must be completed within 60 days of the referral of the pupil to the CST. (N.J.A.C. 6:28-1.6(b); Tr. I-52) The witness also

14

testified that this backlog of 331 cases did not include those classified handicapped pupils for whom an individual educational plan had not yet been developed. (Tr. I-51; N.J.A.C. 6:28-1.8)

In the judgment of the director, this backlog was considerably beyond what could be considered normal from the on-going daily referral of pupils for CST screening. (Tr. I-55) He also testified that during the past school year the CSTs processed only pupils referred as emergency cases and spent the year performing required reevaluations of previously classified handicapped pupils. (Tr. I-76) He testified that members of the district's department of special pupil services informed him that the backlog of 331 pupils represented the most serious cases and that less serious cases, which nevertheless would require CST services, were not even being referred by teaching staff members because of their awareness of the backlog of pupil cases. (Tr. I-64-65).

The director also provided extensive testimony in regard to the need for more personnel for the total program of special education in the Trenton district, as well as for more thorough supervision of the program. (Tr. I-27-37, 60-66, 70-71)

In summary, he testified that there was a continuing need to fill vacancies in the existing CSTs, which at the time of the hearing consisted of two vacancies for school psychologists and four for learning disabilities teacher-consultants (LDT-C). He testified that the district had 12 CSTs in operation and he believed that a thirteenth had been formed for the precise function of evaluating pupils who were referred because they were

being reviewed by a committee of the Board which dealt with pupil discipline cases. He testified regarding a number of suggestions he had made to the district's personnel office and other administrators, including a memorandum to the Superintendent (P-5) for recruiting candidates for special education positions. He even drafted a suggested advertisement for the New York Times (P-4) for this purpose.

The director testified that he had recommended the employment of CSTs during the summer months, the paying of extra salary to CST personnel for extended hours of service and the contracting of personnel on a part of full-time basis in order to eliminate the backlog of pupil cases and to expedite the completion of individual educational plans for handicapped pupils.

The director also testified that in February 1979 he discussed with personnel from the district the adequacy of an allocation of approximately $800,000 in the proposed 1979-80 school budget for tuition payments for special education pupils placed in schools outside the district. From such discussions he concluded that such amount would be sufficient for the handicapped pupils who were in out-of-district schools at that time. It was his judgment that this proposed budgetary allocation would be inadequate if the completion of the backlog of cases resulted in an increase in the number of pupils classified and placed in programs outside the district. (Tr. I-38, 39)

The Department of Education conducts a program which awards grants to local school districts for assistance in the education of handicapped children. Funds from federal sources are allocated under Part B of P.L. 94-142, the Education of All Handicapped Children Act. Instructions and guidelines, with application forms, were distributed to all school districts in March 1978 for the preparation of grant applications for the 1978-79 school year. (P-52)

The guidelines advised districts to estimate the amount of their entitlement by multiplying the average of the number of handicapped children reported on October 1, 1977 and February 1, 1978 by the tentative amount per child of $100 (P-52). The Trenton district's October 1, 1977 report showed a total of 2069 handicapped children (P-53) and the February 1, 1978 report indicated a total of 2017 (P-54). The average of 2043 at $100 per child results in a tentative entitlement of $204,300. The Board's application, by contrast, requested a grant totaling $59,051.47 for the 1978-79 school year, thereby leaving a balance of $145,248.53 which could have been requested to meet critical special education needs in the Trenton public schools (P-55). According to the guidelines, this amount of $145,248.53 could be utilized for the identification and evaluation of handicapped children, the provision of educational services for first priority children, and the employment of additional personnel and in-service training in order to increase the level, intensity and quality of special education services. (P-52, at p. 15)

The Department of Education's coordinator of the grant program for funds under Part B, P.L. 94-142, testified in regard to the grant program, and the processing of the application submitted by the Trenton school district. (Tr. IV-161-178) The coordinator testified that the applications for Part B funds for 1978-79 were to be submitted by May 1, 1978, but the Board's application was received in his office in November 1978. (Tr. IV-166-167) The covering letter of one copy of this application, addressed to the supervisor of child study in the Mercer County Superintendent of School's office, is dated October 3, 1978. (P-55)

The coordinator testified that he had returned the application to the district for corrections and technical information, but that he did not question why this district or any district did not apply for the full amount of entitlement, because he would not usually have knowledge regarding the special education needs within the district. (Tr. IV-175-177)

The hearing examiner, having carefully reviewed all of the evidence addressed in regard to the alleged deficiencies in the Board's program of special education finds that:

1. The Board failed to provide adequate professional personnel and services for the timely identification, evaluation and classification of handicapped pupils, including required reevaluation of previously classified pupils, as required by statute and regulation. N.J.S.A. 18A:46-6 et seq.; N.J.A.C. 6:28-1.3(b), 1.5(a), 1.6(b) and 1.6(p)

2. The Board failed to develop and implement individual educational plans for all classified handicapped pupils. N.J.A.C. 6:28-1.8

3. The Board failed to provide adequate resource rooms and comprehensive programs for handicapped pupils who do not require placement in self-contained classes. N.J.A.C. 6:28-2.2(c)(1)(iii)

4. The Board failed during the 1978-79 school year to avail the school district of funds for special education purposes in the amount of $145,248.53, even though critical needs in this area had been continually evident, as shown by the Board's own remedial plan. (P-2, P-55)

5. Because of the significant backlog of pending cases within the district, teaching staff members were not referring potentially handicapped pupils to CSTs during the 1978-79 academic year.

6. There has been a lack of adequate supervision of the district's total program of special education, which is a causative factor in its failure to remedy all deficiencies in this particular program. The record does not support a conclusion that this state of affairs may be caused by the inefficiency or incompetency of one or more professional staff members. Rather, the problem appears to be the result of inadequate staffing and lack of proper organization. A complex program such as special education, which is subject to numerous detailed regulations, requires adequate numbers of experienced administrative and supervisory staff who have clear lines of

authority and responsibility, as well as adequate budgetary resources for sufficient professional teaching staff members, materials of instruction, supplies, and adequate facilities.

It is clear from the record in the instant matter that the above findings constitute deficiencies of such severity that the Commissioner and State Board of Education will be required to order corrective action. N.J.S.A. 18A:7A-15, 16 Specific recommendations for such corrective action will be set forth at the conclusion of this report.

AFFIRMATIVE ACTION PLANS

Local boards of education in this State are required by statute and regulation to adopt affirmative action plans with regard to both school and classroom practices and employment and contract practices. N.J.S.A. 18A:36-20, N.J.S.A. 10:5-1 et seq., N.J.A.C. 6:4-1.3 et seq. The pertinent regulations were adopted on May 7 and became effective May 20, 1975.

One of the allegations in this case is that the Board has failed to adopt and implement an affirmative action plan, approved by the Department pursuant to N.J.A.C. 6:4-1.3 et seq. Four witnesses testified on behalf of the State: the Director of the Department's Office of Equal Educational Opportunity (OEEO), the coordinator responsible for reviewing the employment and contract practices portion of school district affirmative action plans for the OEEO, a consultant responsible for reviewing the school and classroom practices portion of affirmative action plans, and the school district's affirmative action officer.

A letter from the then acting superintendent to the Director of the OEEO, dated September 17, 1975 (P-43), requested an extension of time for the filing of the district's affirmative action plan for school and classroom practices, which was due, as the letter states, on September 17, 1975. A reply was sent to the acting superintendent by the Director of the OEEO, under date of September 26, 1975 (P-44), granting an extension for filing until October 20, 1975.

The Board approved an affirmative action plan for school and classroom practices on October 14, 1975, which was forwarded to the OEEO Director with a letter of transmittal dated October 17, 1975, signed by the acting superintendent and the then affirmative action officer. (P-45)

The acting superintendent also requested an extension of time for the filing of the district's affirmative action plan for employment and contract practices, which was to be filed by November 16, 1975. This request was contained in a letter addressed to the Director of the OEEO, with a copy sent to the Commissioner. (P-41) The requested extension was granted by the Director until January 5, 1976, in a letter dated December 10, 1975 from the Director to the acting superintendent. (P-40)

The Board approved an affirmative action plan for employment and contract practices on February 19, 1976, which was sent to the Director by the present Superintendent with a covering letter dated March 31, 1976 (P-42).

The Board's affirmative action plans for school and classroom practices, which it had approved on October 14, 1975,

and for employment and contract practices (P-46), which it had approved on February 19, 1976 and submitted on March 31, 1976, were reviewed by the staff and Director of the OEEO.

Because both plans were deficient in certain aspects, neither was approved by the Department. A letter dated January 27, 1976, was sent to the then acting superintendent by the Director, advising the district that the OEEO had completed its review of the school and classroom practices plan. This letter (P-48) included a checklist which had various items marked denoting that insufficient information had been furnished. A similar letter, including a checklist, was sent to the present Superintendent by the Director, under date of June 3, 1976, in regard to the Board's employment and contract practices plan. (P-47)

The district's affirmative action officer testified that the process of revising the Board's two proposed plans, which had not been approved, was begun shortly after receipt of the two checklists from the Department (P-47, 48), which indicated required changes and modifications. According to the affirmative action officer, the necessary revisions were all completed in July 1977. (Tr. IV-95)

The revised plan for employment and contract practices was considered by the Board at a special meeting held July 7, 1977. The minutes disclose that at least one Board member urged rejection of the proposed plan on the grounds that it contained a quota or percentage plan for employment, which, according to this Board member, had been held to be illegal by the New Jersey

Supreme Court. After considerable discussion of this proposed plan by the Board, a motion to approve it was defeated by a vote of six to two with one member absent. (P-56)

The affirmative action officer testified that he again revised the employment and contract practices plan following the July 7, 1977 special meeting, and the revised plan was considered by the Board at its regular meeting held August 23, 1977. At this meeting a motion was made to approve the affirmative action plan which was first submitted in December 1975, presented again in February 1976, revised and presented in June 1977, presented at the last meeting of the Board, and now re-presented with the exclusions of lines 11, 12 and 13 on page 5. This motion was seconded and discussed and then was defeated by a roll call vote of four ayes and four nays, with one Board member absent. (Tr. IV-96; P-57, at p. 27) The Board then approved a motion, by a five to one vote with one absention and with two members absent, to advise federal and State authorities that it was unable to agree on an affirmative action plan. (P-57, at pp. 27, 28)

The Board's affirmative action officer testified that he reported the results of the Board's August 23, 1977 meeting to the Director of the OEEO. (Tr. IV-109) Thereafter, the Superintendent addressed a communication dated September 16, 1977 to the Director. This letter is quoted in its entirety as follows:

> "It is with deep regret that I must report that I have been unable to pull my Board together for the purpose of supporting an Affirmative Action/Desegregation Plan.

> "We, at the school system, under my administration, have tried everything conceivable and perhaps at this juncture you and the Commissioner of Education, or his designee, should meet with the Trenton Board of Education since we are the only system which has not complied.
>
> "If there is anything we have left undone, I would be most happy to join with you in attempting that." (P-7)

The Board's affirmative action officer also wrote to the Director under date of October 21, 1977, in which he discussed the seriousness of the current status of the Board's affirmative action plan. In this letter he referred to a meeting with the Director during which she had indicated her intention to bring this matter to the attention of the Commissioner. He advised her that he would be unable to submit a written report to the Board, which it had requested, explaining the Board's status of noncompliance, until the Director informed him regarding the Department's position in this matter. (P-50)

Several witnesses testified that a meeting was held on December 8, 1977 at the request of the Commissioner between Department staff, members of the Trenton Board and staff members from the district. The Deputy Commissioner presided at this meeting, and the Director of the OEEO was present with several of her staff members, as was the Mercer County Superintendent of Schools. The Superintendent of the district, the affirmative action officer and Board members Lloyd, Potkay, and McLeod were present, as well as several other persons. At this meeting the representatives of the school district were told that an acceptable Board-approved affirmative action plan for both school

and classroom practices and employment and contract practices would have to be submitted to the Department. (Tr. I-85, 86; III-67, 68; IV-99-110) The school district representatives were advised that the OEEO would work with them in the development of the plan, and a subsequent meeting was held on December 21, 1977 between the Board's affirmative action officer, the OEEO consultant and two other OEEO staff members to discuss the major components of the Board's plan and to arrange a process for approval of the Board's plan in stages after it was revised. (Tr. III-67, 68)

Subsequent to these two meetings, a letter was sent to the Board's affirmative action officer by the OEEO Director, dated January 24, 1978, which summarized the agreement reached between the Department and the Board at those meetings. (P-6; Tr. I-89, 90; III-69, 70; IV-100) The Board was required to submit a conditional or tentative plan by April 3, 1978, which was not done. (Tr. III-70)

The Board's affirmative action officer testified that he completed the required revisions in the affirmative action plan in May 1978, which he sent to each Board member with a copy of the Department's letter of January 24, 1978 (P-6) and a memorandum indicating that all of the instructions in the letter had been complied with. (Tr. IV-100, 104) He further testified that he twice asked the president of the Board to place the revised plan on the agenda of June and July Board meetings. (Tr. IV-101, 103) The proposed plan was not placed on a Board meeting agenda until February 27, 1979, at which meeting a motion

was made and carried by a vote of six to one with one abstention, to table the plan until the March meeting. The president advised the affirmative action officer that he was to furnish all Board members with copies of the affirmative action plans from all school districts in Mercer County. (P-58 at p. 16)

The OEEO consultant who worked with the school district testified that the timetable agreed to at the December 8 and 21 meetings was realistic and that none of the representatives from the district voiced any objection to that timetable which was set forth in the letter of January 24, 1978. (P-6; Tr. III-74, 75)

Testimony of the OEEO Director, and the other witnesses, makes clear that the Department had a great deal of contact with and provided substantial assistance to the Trenton school district in an effort to secure adequate Board-approved affirmative action plans. (Tr. I-84, 85) The Board's actions during this period of almost four years must be characterized as more than refractory or recalcitrant; it more accurately may be described as a cavalier attitude, insofar as the affirmative action requirements are concerned.

The hearing examiner finds that the Board indeed failed to adopt and implement an affirmative action plan, approved by the Department, pursuant to N.J.A.C. 6:4-1.3 et seq.

The hearing examiner is aware that on August 21, 1979, while this report was in preparation, the OEEO was able to approve affirmative action plans for school and classroom practices, as well as employment and contract practices, for the district. This information was furnished by letters addressed to

the Superintendent from the OEEO Director dated August 21, 1979 (P-61, 62), of which judicial notice is hereby taken. Notwithstanding this fact, the implementation of both of these plans is of major concern to the Department, particularly in view of the district's past performance in regard to affirmative action plans.

The hearing examiner finds that this deficiency has been of such magnitude to warrant corrective action by the Commissioner and the State Board, specifically to insure a timely, efficient and complete implementation of both portions of the affirmative action plan. N.J.S.A. 18A:7A-15, 16

The hearing examiner will set forth recommendations for corrective action in this regard at the conclusion of this report.

SCHOOL FACILITIES

The Order to Show Cause in this case alleges failure on the part of the Board to ensure the provision of safe and suitable school facilities consistent with statutory and regulatory requirements.

The chief safety consultant of the Bureau of Facility Planning Services, Division of Field Services, testified in regard to inspections he had performed and reports he had prepared in 1976, 1977 and 1979, with respect to schoolhouses in the Trenton school district. This witness had participated in an inspection of six schoolhouses in 1976, each of which had previously been recommended for abandonment. The results of this inspection are set forth in detail in a report entitled "Plans

for Renovating, Repairing or Abandoning Certain Schools in the City of Trenton" which is dated July 1976. (P-8) The six schools, with the dates of construction, are as follows:

1. William G. Cook School - 1890 (now Fleming Junior High School)
2. Franklin Elementary School - 1913
3. B.C. Gregory Elementary School - 1912
4. Harrison Elementary School - 1903
5. Jefferson Elementary School - 1905
6. Mott Elementary School - 1881

This 1976 report concludes that the six elementary schools evaluated therein, which at that time ranged in age from sixty-three to ninety-five years, did not meet the minimum health and safety standards of the Department and that the schools should be abandoned. The report also states that, if the Board cannot abandon the six schools, the code violations should be corrected immediately for the safety and welfare of all who use these facilities. (P-8, at pp. 33, 34)

On or about June 1977, the Superintendent requested that the Department approve the use of the Cook Elementary School to accommodate special education pupils. As a result of this request, the Deputy Commissioner directed staff members of the Bureau of Facility Planning Services to examine the school's facilities on June 14, 1977. In a letter dated June 21, 1977 (P-10, at pp. 2, 3) addressed to the then Mercer County Superintendent, the Deputy Commissioner listed 23 items of minimum health and safety measures which must be taken in order

for this schoolhouse to be used even on a temporary basis. The Deputy Commissioner also stated in his letter that, in view of the extensive work needed to bring the Cook Elementary School up to minimum standards for the health and safety of pupils, it was highly questionable to continue the use of this schoolhouse for any purpose. (P-10, at p. 4; Tr. I-116-118)

The chief safety consultant visited a number of schools in the district on February 13, 14, and 15, 1979, while another member of the Bureau visited others. A total of eleven schools were inspected and a written report was submitted to the acting county superintendent dated February 20, 1979. (P-9; Tr. I-11[illegible]) This report covered Central High School, Junior High Schools No. 1, 2, 3, 5, Fleming Junior High School, and the Franklin, Gregory, Harrison, Jefferson and Mott Elementary Schools. The chief safety consultant inspected the Fleming Junior High School (formerly Cook Elementary School), the Gregory and Jefferson Elementary Schools, Central High School, and Junior High Schools No. 1, 3, and 5. This witness had also made the inspection of the Cook Elementary School in June 1977, which was summarized in the Deputy Commissioner's letter of June 21, 1977. (P-10; Tr. I-116, 117) In his report of the February 1979 inspection of the Fleming Junior High School, he stated that 15 of the 23 deficiencies had been corrected, namely items No. 1, 2, 3, 5, 6, 9, 10, 11, 13, 15, 16, 18, 21, 22 and 23. He testified that there were still deficiencies in items 4, lack of wire glass; item 7, improper storage closets; item 8, lack of mechanical exhaust in the windowless lavatory rooms; item 12, combustible

wood shelving in cabinets in corridors; item 14, emergency lighting in the auditorium not installed; item 17, lack of an access ramp for physically handicapped; item 19, exposed fluorescent lighting tubes; and item 20, improperly operating thermostatic heating controls (P-9). (Tr. I-125-127)

The July 1976 report (P-8) listed 25 health and safety violations for the Gregory Elementary School, including items 1B, 5B, 5C and 7 through 28 on pages 19 and 20. The chief safety consultant's report of February 20, 1979 (P-9) indicated that the lighting level had been raised to the required 50 footcandle minimum (item 1B, p. 17 of P-8) and that duplicating fluid was stored in a metal cabinet (item 27, p. 20 of P-8). He testified that the remaining violations remained uncorrected. (Tr. I-128, 129)

The Jefferson Elementary School was included in the July 1976 report, which indicated 26 health and safety deficiencies, including items 3G, 6, and 10 through 33 (P-8 at pp. 24-27). The report of the February 1979 inspection showed that the only corrections made were the removal of corridor obstructions (item 21, p. 27 of P-8) and the installation of temperature controls which did not appear to be functioning properly (item 3G, p. 24 of P-8). This witness testified that all of the remaining 24 deficiencies remained uncorrected. (Tr. I-129)

The chief safety consultant also testified regarding numerous deficiencies found at Junior High School No. 1 and Central High School (Tr. I-129-133), as well as regarding the two reports in general. (Tr. I-134-138)

The hearing examiner finds that the evidence of deficiencies as presented by the testimony of the chief safety consultant and the report of inspections (P-8, 9, 10) stands unrefuted. A comparison of the 1976 report and the 1979 report clearly shows that little was done to remove the health and safety deficiencies originally in the six elementary schools reported, with the exception of those items noted, ante, in regard to the former Cook School. The 1979 report discloses numerous health and safety deficiencies in Junior High Schools No. 1, 2, 3 and 5, as well as Central High School (P-9).

Having carefully examined all of the evidence, the hearing examiner finds that the Board has failed to provide safe and suitable school facilities in the six elementary schools hereinbefore described, as well as Junior High Schools No. 1, 2, 3 and 5, and Central High School.

In order to remedy the numerous deficiencies found to exist in health and safety provisions, an in-depth study will be required of the school district's maintenance and repair procedures, as well as the amount of funds budgeted for this purpose. Recommendations for corrective action by the Commissioner and the State Board will be set forth at the conclusion of this report. N.J.S.A. 18A:7A-15-16

BILINGUAL EDUCATION PROGRAM

The Order alleges that the Board has not satisfactorily established full programs of bilingual education in all schools which have enrolled pupils of limited English speaking ability, including the provision of adequate numbers of teaching staff as well as supplies and materials of instruction.

The director of the Bureau of Bilingual Education, Division of School Programs, testified that the Bilingual Education Act became effective in January 1975, and that local school districts were required to fully implement programs of bilingual education during the 1976-77 academic year. She described the types of activities which a school district must undertake in order to comply with the provisions of the Act and pertinent regulations. N.J.S.A. 18A:35-15 et seq.; N.J.A.C. 6:31-1.2(b) Such activities include taking a census of all pupils whose native language is not English and the screening of identified pupils to determine their degree of proficiency in the English language. This process is applied to all new pupils who enter the school district. When the eligible pupil population has been determined, the district must provide adequate classroom facilities, certified teaching staff members, materials of instruction, and appropriate programs of instruction. Parents of eligible pupils must be notified regarding this process and given opportunity to become involved. (Tr. II-3, 4)

A monitoring visit was made to the district in May 1977 and a letter was subsequently sent to the Superintendent under date of June 8, 1977 (P-11) by the director, setting forth the

Department's grave concerns regarding severe deficiencies in the operation of the bilingual program, including the use of State funds. This letter included a warning that the district would not receive State funds for bilingual education unless a full bilingual program was established for the 1977-78 school year. (P-11; Tr. II-5, 6)

At the direction of the Commissioner a State and county monitoring team again visited the district during November 1977. The results of this visit were detailed in the Department's report to the school district (P-1, ante) dated January 31, 1978. Numerous serious deficiencies are reported therein with respect to the local and State supported bilingual education program, the E.S.E.A. Title I Non-Standard English Component (NSE) and the E.S.E.A. Title VII Bilingual Education Program. (P-1, at pp. 4-6) The Title I and Title VII programs are designed to provide supplemental services and programs for eligible bilingual pupils. These programs are required to be in addition to, and not in place of, local and State bilingual programs. (Tr. II-7, 8)

The remedial plan submitted by the district, ante, listed each of the deficiencies and the proposed actions to correct them. (P-2, at pp. 19-30, Addenda 1 and 2) It is evident from the testimony of the director and a review of the reports of June 8, 1977 (P-11), January 31, 1978 (P-1), and the remedial plan of March 24, 1978 (P-2) that the district's screening and assessment process of pupils was inadequate in May 1977 and had not been corrected in November 1977. It is also clear that the

district was not operating full bilingual programs in May or November 1977. (Tr. II-7)

The district's remedial plan proposed to furnish by May 1, 1978 the data on pupil identification and screening which had been due in October 1977. (P-2, at p. 19) The director testified that the Department did not receive this data and that the report which was to be filed by the district in October 1978 was also late. (Tr. II-8, 9) The director testified that the district had made some progress in regard to data collection (Tr. II-15, 16), the securing of testing and instructional equipment (Tr. II-16), the removal of English speaking pupils from bilingual programs and their replacement with pupils of limited English speaking ability (Tr. II-28, 29), and the organization of a parent advisory council (Tr. II-30). The director also testified that there remained nine teacher vacancies in bilingual education and, as a result, the district was not operating a full program for the 1978-79 academic year in the elementary schools. (Tr. II-10, 16)

This witness also testified that the district is not complying with federal regulations because both the E.S.E.A. Title I BSE program and the E.S.E.A. Title VII programs must be supplemental to a full bilingual program, which includes native language instruction, and the district is not providing such a full program for all eligible bilingual pupils. (Tr. II-18, 19) On cross-examination, the director testified that she was aware that some bilingual teacher candidates had been interviewed by the district and had been offered employment, but because of

the late notification of such employment they had secured teaching positions elsewhere. (Tr. II-24, 25)

A consultant employed in the Bureau of Bilingual Education testified that he was directed in January 1979 to review the Board's proposed budget for 1979-80 with respect to the adequacy of provisions for bilingual education. As part of this task he visited the district for a week to review the existing bilingual education program as well as the proposed 1979-80 program. This function was part of the monitoring process of the district's remedial plan for bilingual education. (Tr. II-33, 34) A report of this review was submitted to the acting county superintendent under date of February 16, 1979, by this consultant. (P-13)

The district had submitted the required annual needs assessment summary of bilingual pupils on November 20, 1978, which showed that, as of September 30, 1978, the district had 955 pupils with limited English speaking ability, of which 927 were Spanish speaking. (P-12)

The consultant encountered difficulty in ascertaining the actual number of Spanish speaking pupils that were receiving a bilingual education program. (Tr. II-34) He visited as many schools as possible to verify the actual number and he secured this information from seven schools. For the remaining schools which he could not visit, he utilized data from the central office of the district. In his report to the acting county superintendent he stated that 502 Spanish speaking pupils were participating in a bilingual program and 425 were not being

appropriately served. He pointed out in this report that the needs assessment had not been updated since September 30, 1978, and therefore the total number of unserved pupils might not be entirely accurate. (P-13; Tr. II-35, 38) The consultant testified that although all of the pupils receive instruction in English as a second language, only 59 elementary school pupils were receiving a full bilingual program. (P-13; Tr. II-39) He testified that those pupils who were receiving instruction in either English as a second language (ESL) or bilingual programs, i.e. instruction in the Spanish language in regular classroom subjects, were being taken out of their regular classes for time periods totaling one to three hours, depending upon the number of teachers available. The bilingual instruction received by these pupils was in the basic skills areas of reading and mathematics. (P-13; Tr. II-40) It is clear from the table contained in the consultant's report that 453 eligible pupils were receiving no bilingual education program and, of this number, 344 were elementary school pupils. (P-13) The Board's remedial plan had provided that at least all elementary school pupils would receive full bilingual programs during the 1978-79 academic year (P-2) but this goal obviously was not realized. (P-13; Tr. II-9-10)

The consultant testified, and stated in his report, that the problem of classroom space could be resolved if eligible pupils were grouped in regular classes instead of being taken out of their classes for bilingual or ESL instruction. For example, if a school contained three first grade classes from which ten, eight and seven pupils, respectively, were being taken out, these

25 pupils could be grouped in one class for bilingual and ESL instruction. This would obviate the need for an extra classroom to provide such instruction. This could even be done with a combined class of, for example, first and second grade pupils, since such a practice is permitted by the regulations. Also, pupils from several schools could be brought together in centers where they could be grouped into classes. (Tr. II-43, 44, 62, 63) This witness testified and reported that the space problem is created essentially by the school district's conception that the bilingual program is supplemental in nature and not a regular school program. (P-13; Tr. II-43)

The consultant testified that his examination of the Board's proposed 1979-80 school budget showed that no provision was being made for seven additional bilingual teachers, financed from local and State funds, as was set forth in the district's long range component of the remedial plan. (P-2; Tr. II-42) This circumstance, he testified, would result in the district failing to meet the needs of eligible pupils during the 1979-80 academic year. The proposed budget did include provision for the nine vacant positions which existed during the 1978-79 school year, but the failure to fill these vacant positions was clearly a factor in the district's lack of compliance with its 1978-79 remedial plan, which was limited to the bilingual education program in the elementary schools. (Tr. II-41, 42)

The consultant testified at some length regarding the availability of teacher applicants for bilingual education

programs. In his judgment, the increase in the number of colleges offering training in bilingual and ESL programs and the increased availability of both provisional and emergency certification over the past two and one-half year period had significantly reduced the shortage of qualified teachers. (Tr. II-51, 52)

He testified that the district's recruiting efforts for such teachers were traditional, such as sending vacancy notices to institutions and organizations and advertising in newspapers. He further testified that, since the district's teacher vacancies have persisted over a period of years, the district's administrators should attempt to recruit bilingual and ESL teachers on site at college and universities where the candidates are receiving training. Another method he suggested would involve contacting state and national organizations which would have files of candidates, and also recruiting at their state and national conventions. He testified that the district must plan more vigorous methods of recruitment in order to meet its staffing requirements. (Tr. II-60-62)

The hearing examiner has reviewed all of the evidence in regard to the Board's bilingual education program and finds that the Board has failed to: (1) meet the limited requirements of the remedial plan for 1978-79; (2) plan adequate budgetary provisions for bilingual teaching staff members for the 1979-80 school year; and (3) provide adequate programs of bilingual education for eligible pupils.

These serious deficiencies clearly warrant corrective action by the Commissioner and the State Board of Education. N.J.S.A. 18A:7A-15, 16 Specific recommendations for such corrective action will be set forth at the conclusion of this report.

SUBMISSION OF REPORTS

The Order alleges that the Board failed to submit, in a timely manner, reports and documents as required by the school laws and pertinent regulations. The acting county superintendent, who had formerly been assistant county superintendent and the chairman of the Commissioner's task force, testified regarding this allegation.

Previous witnesses testified that affirmative action plans and revisions thereto had not been completed in a timely manner, even though the district had received extensions of deadlines for filing them. (Tr. III-70, 74-75; P-40, 42, 43, 45) Also, in the area of special education, the Board's application for federal funds under Part B of P.L. 94-142, ante, which was to be filed by May 1, 1978, was not received by the Department until November 1978, and then had to be returned to the district for corrections and the addition of technical information. (Tr. IV-166-167, 175-178; P-55) The district's reports of pupil needs assessment for bilingual education were submitted late and monthly updates were not completed. Nor did the district submit the overdue needs assessment report in May 1978, in accordance with the remedial plan. (Tr. II-8-9; P-2)

Testimony from the acting county superintendent established that the district submitted its annual financial report of the custodian of school moneys on November 9, 1978. This report was to be filed in the county superintendent's office on or before August 1, 1978. (Tr. II-72) The district's annual financial and statistical report of ratio information, which was also due on August 1, 1978, was not received in the county office until October 23, 1978. (Tr. II-71-73) The annual report and application for state financial aid for pupil transportation (A4d), which is necessary for the reimbursement of approved transportation expenditures by the Department to the district, was filed on September 14, 1978, but was due on August 1, 1978. N.J.S.A. 18A:58-7 (Tr. II-74)

The acting county superintendent testified that contracts for pupil transportation between local boards of education and transportation vendors must be approved by the county superintendent before the actual transportation services are begun on the first day of school. The district's transportation contracts for the 1978-79 academic year were not received in the county office until January 8, 1979, more than four months after the opening of school, although services under these contracts had been provided to the district beginning in September 1978. (Tr. II-75)

The district's report on aides appointed for the 1978-79 school year, which was due on September 30, 1978, was not filed until February 22, 1979. (Tr. II-76) A similar problem occurred in regard to the district's annual report of certifi-

cated staff employed which, although due on November 1, 1978, was not filed until January 4, 1979, and the annual report of non-certificated support services personnel, due November 15, 1978, which was filed January 4, 1979. (Tr. II-78-79)

Under cross-examination, the acting county superintendent testified that during her tenure as assistant county superintendent the district had been rather consistently late in submitting required reports. This covered a period of between three and four years. (Tr. III-6-7) She testified that it is the usual practice of the county office to make telephone calls to various offices in the Trenton district to inquire about late reports. Also, local districts are reminded regarding the filing of reports at monthly meetings of school administrators with the County Superintendent. (Tr. III-15-16) This witness further testified that from her experience in Mercer County, as well as other counties, she has found that school districts rather consistently submit required reports on time. (Tr. III-14)

The hearing examiner has carefully reviewed all of the evidence with regard to this allegation and finds that there has been a pattern of failure on the part of the district to submit required reports and documents in a timely manner in conformance with statutory provisions and regulations. Recommendations for corrective action for this situation will be considered at the conclusion of this report. N.J.S.A. 18A:7A-15, 16

EFFICIENT ADMINISTRATIVE PROCEDURES
SUFFICIENCY OF 1978-79 SCHOOL BUDGET
EMPLOYMENT OF TEACHING STAFF MEMBERS

The Order in this matter alleges that the district has failed to: (1) prepare, adopt and implement efficient adminis-

trative procedures pursuant to N.J.A.C. 6:8-4.7; (2) to fully document the sufficiency of each appropriation line item of the 1978-79 school budget, pursuant to N.J.A.C. 6:8-5.1; and (3) to employ teaching staff members based upon the needs of the schools and district, pursuant to N.J.A.C. 6:8-4.3 and defined under N.J.A.C. 6:8-1.1. These three areas are interdependent and will be examined together.

One clear example of inefficient management and administrative procedure was the Board's submission of an application for federal funds for special education purposes, whereby the Board failed to avail the district of $145,248.53, although critical needs have been consistently evident, as shown in the Board's remedial plan. This situation has been described, ante, and requires no further elaboration. (P-2, 55; Tr. I-29; Tr. IV-6-16)

This report has hereinbefore described the district's failure to find and allocate classroom space for the special education resource room program which was an element of the Board's remedial plan, until a member of the task force intervened directly with the district's school officials. (Tr. I-23-25; P-2) Previous mention has also been made with respect to the district's bilingual education program, particularly the inadequate procedures for collecting and centralizing data regarding pupil needs assessments and enrollments in the bilingual program. (Tr. II-15-17) The district also made no effort to effectuate the recommendation to organize the assignment of pupils enrolled in bilingual education programs in a manner which could have made

more classrooms available for unserved, eligible pupils, ante. (Tr. II-43-46)

It was previously reported, ante, that the Department's report of January 31, 1978 to the district (P-1) contained a major finding, following a fiscal review, that there was a projected deficit of $670,542 by June 30, 1978, based upon anticipated revenue shortages and projected overexpenditures. The Board's audit report for the 1977-78 school year was filed on October 27, 1978, and shows that the current expense account contained a revenue balance of $83,223.02 as of June 30, 1978. This 1977-78 audit report also discloses that the Board was required to refund to the State a total of $418,034.87, comprised as follows:

$344,852.30	Current Expenses (unspecified)
9,955.93	E.S.E.A. 1977-78
3,816.20	E.S.E.A. 1976-77
59,410.44	Special Projects
$418,034.87	Total

The audit also shows a refund to the federal government in the total amount of $81,200.40, of which $36,030.40 is for E.S.E.A. 1977-78, $.21 for E.S.E.A. 1976-77, and $45,169.79 for special projects. (1977-78 Audit Report, Exhibit A-1) Judicial notice is taken of this 1977-78 audit report, which is on file in the Board's office, the County Superintendent's office and the Division of Finance and Regulatory Services of the Department.

The Board's proposed school budget for the 1978-79 fiscal year failed to secure voter approval at the annual school election and subsequently the amount to be raised by local taxation for current expenses was reduced by action of the City

Council in the amount of $783,000. This occurred at approximately the time that the Board prepared and submitted its remedial plan. (P-2) The acting county superintendent, who chaired the task force, testified that the Board determined not to appeal this reduction of the 1978-79 school budget, although the remedial plan entailed considerable additional expenditures which had not been included in the originally proposed budget. As a result of this determination by the Board, the administration was faced with the problem of reallocating funds in order to prepare a revised, reduced 1978-79 school budget, while at the same time making provisions for the additional costs required by the implementation of the remedial plan. The task force assisted the district's administration in the preparation of a plan for reallocating the funds available in the 1978-79 school budget. (Tr. II-80, 93-94)

The proposed solution included a plan to reduce the district's staff of regular elementary school teachers by transferring a number of them to positions funded by compensatory education state aid, for which such teachers were properly certified. The moneys realized by such a reduction of elementary school teachers were to be utilized to meet requirements of the remedial plan. (Tr. II-80)

The minutes of the Board's regular meeting held April 27, 1978 (P-21) show that the Board took formal action to direct the Superintendent to notify affected personnel before April 30 of its determination to abolish certain positions effective June 30, 1978. The minutes state that the names of affected

individuals were on a list on file in the Board Secretary's office and the personnel office. The hearing examiner notices that this formal motion was defective, because any formal action of a local board of education to abolish positions must list the exact title and number of positions which are being abolished. The names of those individuals who are affected need not appear in the minutes, because the reduction in force of tenured and nontenured teaching staff members must be performed in accordance with applicable statutes and regulations, and the determination of their seniority may be accomplished subsequent to the formal action abolishing the positions. N.J.S.A. 18A:28-9 et seq.; N.J.A.C. 6:3-1.10

At this same meeting of April 27, 1978, the Board also adopted a motion directing the Superintendent to notify affected personnel prior to April 30 of its determination to make certain transfers of personnel, effective June 30, 1978. This motion also stated that the list of those individuals to be transferred was on file in the Board Secretary's office and the personnel office. (P-21)

The hearing officer stated for the record that this motion to transfer was improper, since it did not list the names of the affected teaching staff members, nor the schools from which and to which they were being transferred. The applicable statute, N.J.S.A. 18A:25-1, which provides that no teaching staff member shall be transferred except by a recorded roll call majority vote of the full membership of the board of education by which he is employed, has been consistently construed to require

that the formal action recorded in the minutes clearly show the names of those transferred as well as the schools to and from which they are being transferred. (Tr. II-88-89, 141-142)

The Board stipulated that one of the transfers made at the special meeting of April 27, 1978, involved the appointment of the district's Title I E.S.E.A. director to the position of director of compensatory education. The acting county superintendent testified that she believed this transfer was made by the Board without recommendation by the Superintendent, which was a violation of the Board's own policy. (Tr. II-84-85, 92; P-23) The acting county superintendent further testified that, in her judgment, this transfer was ill-advised, because a new plan for the district's 1978-79 compensatory education program had to be devised and a report was due to be filed with the Department by July 1, 1978. (Tr. II-83-85)

A summary of the Board's discussion in an executive session held on April 27, 1978, was sent to the Superintendent by the Board Secretary under date of April 28. (P-22) This memorandum lists 19 positions to be abolished, as well as five additional positions which were to become vacant by June 30, 1978. In addition, it includes the abolition of the extra-duty positions of sophomore football coaches at the high school. The memorandum also includes a list of thirteen individuals and the positions to which they are to be transferred, but does not show their respective existing positions. Also included are the names of six nontenured teaching staff members who were not being offered reemployment. The memorandum also states that 60 para-

professionals, which is taken to correctly mean aides, were not to be reemployed. (P-22) As was previously stated, this procedure for abolishing positions and transferring teaching staff members is wholly improper. From the evidence in the record, it is not clear whether these personnel recommendations emanated from the Superintendent.

The acting county superintendent testified that the task force worked with the Board's finance committee to develop a revised 1978-79 school budget which would take into account the reduction made by the City Council and the additional costs required by the remedial plan. These recommendations were considered by the Board at a planning meeting held May 18, 1978, and were placed on the agenda of the regular meeting held May 25. (Tr. II-93; P-24-25) The recommendation included a resolution which referred to the City Council's reduction in the amount of $783,000, the cost of the remedial plan which was estimated as $325,000, and a request to the Commissioner for a reduction of the previously approved $783,000 cap waiver to $468,000. Suggested budget reductions were listed in this document in the amount of $1,570,900. Also, additional budget reductions were added by the administration totaling $420,000, for a grand total of $1,990,900 in reductions. Since the required budget reductions totaled $1,621,000, the difference of $369,900 was suggested to be used for salary adjustments, three compensatory education secretaries and other unmet needs. (Tr. II-93-95; P-24)

The minutes of the regular meeting held May 25, 1978 (P-25) show that the recommended proposal for 1978-79 budget

adjustments was presented by the Superintendent, discussed, and tabled by vote of six ayes, one nay and one abstention, with one member absent. Later, during the same meeting, at the request of the chairman of the finance committee, and with no objections voiced by any Board members, the proposed budget adjustments were withdrawn from the agenda.

During this May 25, 1978 meeting, the Superintendent voiced strong objection to personnel actions recommended by members of the Board. He objected to a previous Board action transferring a permanent vice-principal who is black from Junior High School No. 1 without a recommendation of the Superintendent. He also objected to the Board's current recommendation to make permanent the appointment of the acting principal of Junior High School No. 5, who is white, without his recommendation. He advised the Board that by making appointments which show racial preference, without recommendations from the Superintendent, the Board was treading on dangerous ground. A member of the Board also stated his firm opposition to the Board's personnel recommendations, which had not come from the Superintendent, and viewed this as a dangerous aspect of the Board's tendency to administer the school system. (P-25 at pp. 10-11) The Board's recommendations were then approved by a vote of six ayes and two nays, with one member absent.

At the regular meeting of the Board held June 29, 1978, the following letter to the Board president from the Assistant Commissioner in charge of the Division of Administration and Finance was read into the minutes:

"This will verify our conversation of several days ago. You will recall that I indicated to you that we had not received an approved budget of the Board of Education of the City of Trenton. I cannot overemphasize the serious problem this lack of action on the part of your Board could have on the Trenton system.

"Since the Department does not have a budget passed by the Board of Education and approved by the County Superintendent, we cannot place the Trenton figures into the computer for the calculation of State aid. Ultimately, this would result in Trenton not being notified of the State aid due for the 1979-80 school year. The lack of a decision on the part of the Board concerning their 1978-79 budget could also impact on the actual State aid to be paid in 1979-80.

"In my opinion, unless the Board of Education adopts and approves a budget for 1978-79 prior to July 1, 1978, expenditures may not be made after that date. If this occurs I would have to advise the Commissioner to exercise his authority to assure a continuing program in the schools. Please inform me in writing after your meeting on Thursday, June 29, 1978, as to the budget approved on that date. If no action is taken, please forward a certification that the board of education did not adopt a budget prior to the end of the school year.

"I cannot overemphasize the importance of the board of education fulfilling its statutory responsibilities under existing law.

"It is also important to note that in your cap waiver, certain items were specifically approved as a condition of the waiver. The board of education is expected to fulfill those obligations in any budget that is finally considered by the board. Alterations of the dollar amount specifically approved would require a refiling of the waiver request and full statements indicating those goals and objectives which are being modified. The issue of time lines when the areas are finally implemented should also be addressed." (P-26 at p. 15)

The Board then unanimously approved a motion which included the resolution regarding the 1978-79 budget and cap waiver, ante, which was referred to as exhibit Q, as well as a two page document, called exhibit P in the minutes, listing budget increases totaling $728,000 and decreases totaling $1,621,000, resulting in a net decrease of $893,000, which was $110,000 more than the $783,000 reduction made by the City Council. (P-26) This action obviously did not provide for a 1978-79 school budget with balanced revenues and expenditures.

At the same meeting of June 29, 1978, the Board formally approved the submission of the annual report for July 1, 1978, the Basic Skills Summary, required by the Public School Education Act (N.J.S.A. 18A:7A-1 et seq.) but excluding information regarding compensatory education, which is an integral part of the basic skills program. (P-26) Immediately thereafter, the president directed that the compensatory education program for 1978-79, item C, be removed from the agenda. (P-26 at p. 5) Subsequently, a Board member made a motion to approve the compensatory education plan for 1978-79, attachment C, and the motion received a second. Another Board member then moved to table item C, and then both motions were withdrawn. (P-26 at p. 5) These unusual procedures of removing and tabling agenda items, which appear frequently throughout the minutes of the Board's meeting, will be discussed, post, as part of a review of the Board's minutes and procedures.

The Board's annual report of its Basic Skills Improvement Plan, which includes the compensatory education plan, was

submitted to the Department on June 30, 1978, although the compensatory education part had not received Board approval as required by the Department. This document, signed by the Superintendent, included the following as part of the statement of assurances:

> "***I hereby certify that the information contained in this application is correct, documented and available for review, and, that the school district named below has authorized me as its representative to file this document which has been approved by the Board of Education for inclusion in the minutes of the meeting on June 29, 1978.
> (P-27 at p. 1)

The second part of this annual report of the Basic Skills Improvement Plan is devoted to information required to validate the district's receipt of state aid for compensatory education for pupils who have not attained minimum levels of achievement in basic skills.

The minutes of the meeting held July 11, 1978 show that the compensatory education plan was on the agenda and received first a motion for approval, which was seconded, and then a motion to table, which was also seconded. The motion to table the compensatory education plan was passed by a vote of five ayes and three nays, with one member absent. This procedure and action were objected to by a Board member and the president ruled that there would be no further discussion on the matter. (P-28 at p. 4) At the same meeting, the Superintendent and Board president each read to the Board portions of a letter dated July 10, 1978, from the Assistant Commissioner, Division of Administration and Finance, to the Board president, which stated, inter alia,

that the Department had not received the Board's 1978-79 applications for state aid for a bilingual education program and a compensatory education program. The Board was also reminded of its duty and responsibility to maintain a balanced budget at all times during the school year. This letter appears in the bound volume of the Board's minutes for July 11, 1978, but is not attached to the exhibit in evidence. (P-28 at pp. 2-3)

During the July 11, 1978 special meeting, the related matter of reallocation of the Board's 1978-79 budget was recommended by the Superintendent. This proposal was part of the plan to transfer existing elementary teachers to compensatory education positions, ante, as part of the remedial plan. The recommendation, exhibit A, called for the reduction of various elementary, junior and senior high school positions in the gross amount of $250,000, together with unspecified reductions in maintenance of $100,000. The details of the proposed reduction of 26 elementary positions and staffing changes in five junior high schools appear in the bound volume of the minute book as exhibit B, which is not a part of P-28 in evidence. The motion on reallocation was moved and seconded and a substitute motion to approve the recommendations, excluding the elementary positions, was also moved and seconded. The substitute motion was defeated, and the original motion was passed by a vote of four ayes and three nays with one abstention, the abstaining vote being considered a vote in favor of the motion. (P-28)

The acting county superintendent testified that this action by the Board on July 11, 1978 provided only for a blanket

reduction with proposed unspecified transfers of teachers for the compensatory education program. In her judgment, this showed the absence of a bona fide plan for teacher transfers for the compensatory education program. (Tr. II-107-111)

The minutes of the regular meeting held July 27, 1978 indicate that the 1978-79 compensatory education plan was approved by a unanimous roll call vote of the eight Board members who were present. (P-29) The Board eliminated the position of evaluation specialist for compensatory education effective July 28, 1978, for the reason that the position could not be funded from compensatory education state aid. The affected individual was transferred to a position of mathematics teacher at Junior High School No. 3. (Tr. II-115; P-29-30) At the same meeting, five teachers who had been in positions funded under both Title I E.S.E.A. and compensatory education programs were transferred to positions totally funded by Title I. One other teacher was transferred from a compensatory education position to a regular teaching position. (P-29-30)

The acting county superintendent wrote a memorandum to the Superintendent under date of July 24, 1978, in which she expressed concerns regarding inadequacies in the district's bilingual and compensatory education plans and the plan for child study teams. (P-33) The Superintendent responded in a written memorandum dated July 28, 1978, stating in summary, that the acting county superintendent and members of the task force were well aware of the reasons for the problems in completing the required implementation of the programs in bilingual education, special education and compensatory education. (P-34)

At the regular meeting of the Board held August 31, 1978, the Superintendent presented, inter alia, numerous recommendations regarding the appointment of teaching staff members to regular positions, the special education program, the bilingual program and the compensatory education program. He also presented recommendations for assignments of teachers returning from leaves of absence, transfers of regular teachers, transfers of teachers to the compensatory education program, and for abolishment of 28 elementary school classes and two junior high school classes. (P-31-32)

The minutes of the August 31, 1978 meeting (P-31) disclose that the Board tabled recommendations for the appointment of four of eight elementary teachers and for three of seven secondary teachers. No reasons were given for this action. The Board approved the Superintendent's recommendations for the appointment of 17 teachers for special education and ten teachers for the bilingual education program, but tabled one recommendation for the appointment of a teacher of English as a second language (ESL). The Board also tabled action on the recommendations of the Superintendent for the appointment of a coordinator for compensatory education communication skills and a coordinator of compensatory education computation skills, as well as for seven teachers of compensatory education and the reassignment of a school psychologist to the position of coordinator of child study team services. Again, no reason was provided for such action. The Superintendent's recommendation for the abolishing of 28 elementary and two junior high school classes was also

tabled (P-32, item L; P-31) with no reason given, as well as the recommendation to transfer 38 teaching staff members to the compensatory education program. (P-32, item M; P-31) The Superintendent also recommended the voluntary transfer of 21 teaching staff members, including one guidance counselor and one nurse, and the Board voted to table action on nine of these transfers. (P-32, item N; P-31) The Board also voted to table a recommendation by the Superintendent for the transfer of a special education teacher from a class for trainable, mentally retarded pupils to a class for emotionally disturbed pupils. (P-32, item P; P-31) A recommendation for the creation of four new positions, one nurse, one art, and two special education, educable and neurologically impaired, was also tabled by the Board. (P-32, item U; P-31) A further recommendation by the Superintendent to change the title of a Title I resource teacher to that of compensatory education teacher was also tabled by Board action. (P-32, item V; P-31) The recommended transfer and promotion of a junior secretary to senior secretary in the compensatory education program was also tabled. (P-32, item E1; P-31) The Board also acted to approve the Superintendent's recommendation to reemploy 50 aides who had previously been given notices of termination, ante. (P-32 at pp. 33-34; P-31) Numerous recommendations of the Superintendent for appointments for the district's food service program were first moved and seconded for approval, then moved and seconded to be tabled, which later motion was then adopted. (P-32 at p. 35; P-31)

The Board's August 31, 1978 meeting was continued to Friday, September 1, 1978, at 2:13 p.m. At this time several of the items previously tabled by the Board were approved. (P-31 at pp. 18-19) Following an executive session for the discussion of personnel matters, the Board acted to approve most, but not all, of the previously tabled recommendations for appointment. It did approve the transfer of elementary teachers to the compensatory education program. (P-31 at pp. 20-21) The previously tabled item regarding the abolition of 28 elementary school classes was not acted upon and does not appear in this portion of the Board's minutes. (P-31) During this continued meeting a Board member recommended that a named teacher be appointed as department chairman of health and physical education. The minutes show the Superintendent's comment that it would be more fitting and proper for him to recommend the named individual to temporarily fill the position until it could be properly advertised, screened and a candidate selected for recommendation. (P-31 at p. 22) It is also noteworthy that previously tabled recommendations for the appointment of coordinators for compensatory education communication skills and computation skills were not acted upon at the continued meeting on September 1, 1978.

The acting county superintendent testified that the proposal for staffing the compensatory education program as described, ante, had never been thoroughly detailed to facilitate its implementation. This was partly due to the fact that the adoption of the compensatory education plan by the Board was delayed for an inordinate length of time. Delay in adoption of

the plan caused corresponding delays in action on transferring teaching staff members into the compensatory education program. The reduction of regular elementary classes, which was required to free teachers for the compensatory education program, had not been completely accomplished by September 1, 1978, which was just prior to the opening of schools for the academic year. A new director had been appointed, but two essential appointments for coordinators, ante, had not been approved by the Board. In the judgment of the acting county superintendent, this state of affairs caused great concern among school principals and teachers, who were uncertain at this late date regarding their staffing assignments. This witness also testified that pupil enrollments for the various classes were still not completed at this late time, because of uncertainty regarding the proposed abolishment of numerous classes. (Tr. II-125-126)

The minutes of the regular meeting held September 28, 1978, show that the Superintendent made numerous recommendations regarding the appointment and transfer of teaching staff members. (P-35) The bound volume of the Board's minutes contains the complete separate listing of such recommendations, which are referred to in the actual minutes only by capital letters and numbers. It is necessary to read both documents together in order to ascertain exactly which recommendations the Board acted upon. As was the case in previous meetings, ante, the Board voted to table action on numerous recommendations by the Superintendent. (P-35) The Board did approve the appointment of two teachers of special education, one school psychologist, three

compensatory education teachers and teachers of bilingual education. (P-35) The Superintendent's recommendations for the appointment of a coordinator of compensatory education communication skills and a coordinator of computation skills were both defeated by respective votes of four ayes and four nays, with one member absent. These two recommendations had been previously made at the August 31, 1978 meeting and the continued meeting on September 1, 1978. (P-31; P-35 at pp. 7-8) Nine recommendations for appointments to secondary education teaching positions were presented by the Superintendent, and two of these were tabled by the Board. These two individuals were a black male and a black female, identified as such by a code for race and sex which appears on the list of recommendations by the Superintendent that are in evidence and which appear in the bound volumes of the Board's minute books. This practice will be discussed, post. The Superintendent's recommendations for transfers of personnel, many of which included compensatory education teachers, were also tabled by the Board. (P-35 at p. 9)

At this meeting of September 28, 1978, various Board members had placed upon the agenda their own personnel recommendations which included the appointment of three compensatory education teachers, the transfer of an individual to be acting administrative assistant at Junior High School No. 3, the appointment of a school nurse, the transfer of the Gregory School principal to the position of principal at the Harrison School, the transfer of the Fleming School principal to the principalship of the Gregory School, the placement of the industrial arts

coordinator in the position of acting principal of the Fleming School, the appointment of a staff member as acting coordinator of industrial arts, the transfer of the Robeson School principal to the principalship of the Grant School, the transfer of the high school administrative assistant to the acting principal of the Robeson School, the transfer of a guidance counselor in Junior High School No. 4 to the position of acting administrative assistant at the High School, and the promotion of the administrative assistant from the Grant School to be acting principal of the Columbus School. The Board also listed recommendations for screening of applicants for a transportation coordinator and a director of bilingual education, the readvertising of the positions of commissary manager and assistant manager, and the advertising and screening of the position of department chairman of health and physical education. The above recommendations appear as exhibit S appended to the Board's minutes of the September 28, 1978 meeting (P-35) and are included in somewhat different form in the bound minute book on green sheets, following the Superintendent's recommendations on teaching staff members. The green sheets in the official minute book list the names of individual Board members who made the aforementioned recommendations.

The September 28, 1978 minutes show that the Board's personnel recommendations (P-35, Exhibit S) were first tabled (P-35 at p. 10), but were brought up again under new business later during the meeting. A second motion to table action on these recommendations was defeated. The Superintendent stated that he recommended that the entire document (Exhibit S) be

tabled because none of the recommendations had come from him or his staff. (P-35 at p. 22) Board members Lawrence and Odom requested that the minutes show that they had not been responsible for these recommendations. The motion to approve the recommendations was then defeated by a vote of two ayes, four nays, with two abstentions and one member absent. (P-35 at p. 23)

The Board held a special meeting on October 6, 1978, for the purpose of considering personnel matters, the restoration of classes, and recommendations for the appointment of the two compensatory education coordinators for communication skills and computation skills, as well as transfers of teaching staff members. Also on the agenda were recommendations to continue two acting elementary principals and a recommendation regarding a combined position of hearing officer/attendance officer. The agenda for this meeting is contained in the bound volume of the Board's minutes. The minutes in evidence (P-39) disclose that the Board's counsel had rendered a legal opinion that the previous Board action of July 11, 1978 (P-28) had, in effect, approved the "collapsing" of 28 classes in the district's schools. As previously stated, this had been part of the plan for budget reductions and for staffing of the compensatory education program.

A motion was made and seconded to eliminate all combined grade classes in the elementary schools. The Superintendent informed the Board that this action would require an expenditure of approximately $250,000 and would require 22 classrooms in order to separate the existing 42 to 44 combined elementary

classes. The Board adopted the motion by a vote of five ayes, two nays, with one abstention and one member absent.

By this single action the Board abrogated the extensive efforts which had been expended over many months to effect budgetary economies and, in turn, enable the implementation of the compensatory education plan for 1978-79.

No further action was taken by the Board on the remaining agenda items of the October 6, 1978 special meeting.

At the regular meeting of the Board held October 24, 1978, the Superintendent again presented numerous recommendations regarding teaching staff members. (P-36-37) He recommended the appointment of three elementary teachers, of which two were approved and one was tabled. He also recommended the appointment of four secondary education teachers, two of which were approved. The remaining two recommendations, one a black male social studies teacher and the other a black female mathematics teacher, were tabled. The identification of the sex and race of each recommended individual appears in code form on the list of the Superintendent's recommendations. (P-37) The Superintendent's recommendations for the appointment of seven special education and three bilingual education teachers were approved by a six to two vote with one member absent. The Superintendent recommended the voluntary transfer of 28 teachers, including eight compensatory education teachers, and this was tabled by a vote of five ayes and two nays, with two members absent.

The recommendations for the appointment of the two coordinators of communication skills and computation skills for

the compensatory education program were defeated by identical votes of five to three, with one member absent. These were the same candidates whom the Superintendent had recommended at previous meetings, ante. The Superintendent's recommendation for the appointment of a coordinator of pupil transportation was defeated, and a motion was then made by Board member Potkay recommending the appointment of another staff member to be coordinator of pupil transportation. Board member Odom made the following comment for the record:

> "Am I to understand---what we are doing now the world should see and take careful note. Am I to understand that we have now reached the point where we can capriciously, at a board meeting, nominate anybody that we desire for office from this Board without any regard to recommendations coming from administration? Is that to be our procedure in the future? Not even on the agenda, is that to be our procedure? If so, then I want this put into the record, that that is to be the procedure in the future." (P-36 at p. 10)

Following the defeat of a substitute motion, the recommendation by Board member Potkay was approved by a vote of five to one, with two abstentions and one member absent.

The Superintendent's recommendation for the appointment of an administrative assistant for Junior High School No. 3 was tabled by the Board. The Superintendent then made the following statement:

> "Mr. President for the record. The Superintendent has a question to ask. We have procedures for search and selection. We use hundreds of hours of valuable time of administrators. This is a time used at the sacrifice to our students because they are not being instructed nor are our teachers being supervised or coordinated with or assisted at the time these persons are going

> through this very lengthy, arduous process of search, selection and recommendation. The Superintendent and the administrative staff want to know does the Board intend to abandon this procedure since they have elected to select whoever they wish without the input of administration, without it being on the agenda, they just reach in and pick whoever they wish and place them in positions. I just think it is rather ludicrous for administration to go through this process. Now I'm not speaking for the Superintendent. The Superintendent is not involved in the process. The administrators whom you pay dearly and handsomely have hundreds of hours of experience and education to do this job. I'm saying why are we wasting, why is the Board wasting this money when it just reaches in and does as it has just done? I'd like an answer to this question." (P-36 at p. 11)

A recommendation by the Superintendent for the appointment of a commissary manager for the food services department was defeated by a vote of five to two, with one abstention and one member absent. (P-36 at p. 13)

The Superintendent's recommendations for the appointment of an interim assistant superintendent for support services and an acting assistant superintendent for curriculum, when that administrator is absent more than one working day, were both defeated by the Board. Also, his recommendation for the appointment of an administrative assistant at Junior High School No. 3 was defeated by Board action. Two recommendations by the Superintendent for the continuation of the acting principals of the Grant and Columbus schools were approved, but his recommendation for the appointment of an acting director of guidance was defeated, and the Board then approved Board member Potkay's recommendation for the appointment of another staff member to that position. (P-36 at p. 18)

The Superintendent's recommendation for the appointment of an acting administrative assistant for the Grant School was defeated by the Board, as was his recommendation for the transfer of the principal of the Washington School to the principal of the Harrison School. Board member Gennello's own motion to transfer the principal of the Gregory School to be principal of the Harrison School was then approved by a five to one vote with two abstentions, and one member absent. Board member Lawrence stated his opposition to such action which he characterized as willy-nilly, arbitrary and capricious.

The Superintendent's recommendation to transfer the coordinator of industrial arts to the position of acting principal of the Fleming school was not acted upon and, instead, Board member Potkay's motion to transfer this individual was seconded and discussed by the Board. Board member Lawrence made the following comment for the record:

> "I just finished talking to the employee that you are recommending for that position. He just now finished saying that he did not want that position. This is a case of what I am saying. You're in effect as a board administering the district without checking with the employee." (P-36 at p. 22)

Board member Gennello then made a substitute motion to transfer the principal of the Fleming school to be acting principal of the Gregory school, which was defeated by a vote of three ayes, two nays, with two abstentions and two members absent. The original motion to transfer the coordinator to be acting principal of the Gregory school was then approved by six affirmative votes with one abstention and two members absent.

The Board also took action on eleven personnel recommendations made by individual Board members. One of these recommendations, regarding the director of pupil transportation, had previously been adopted by the Board, ante. Another Board recommendation directed that the two coordinator positions for communication skills and computation skills in the compensatory education program be readvertised and applicants rescreened. (P-37, Addendum) One of the Board's own recommendations, for the appointment of two candidates as compensatory education teachers, was defeated by a vote of three ayes, one nay and one abstention, of the five members who remained at the meeting. The same recommendation, which was one among ten made by Board members, was also defeated in two separate respective votes during the Board's November 16, 1978 regular meeting, as is shown by the bound volume of the Board's official minutes.

The minutes of the Board's regular meeting of December 13, 1978 (P-38) disclose that recommendations by the Superintendent for the appointment of two assistant superintendents were defeated by the Board. The Superintendent's recommendation for the appointment of a coordinator of compensatory education computation skills was defeated by a vote of two ayes and five nays, with two members absent. This same recommendation had failed to receive approval at several previous meetings, ante. Board member Potkay then moved the appointment of another staff member for this position, and this was seconded and approved by a vote of five ayes and one nay, with three members absent at this time. The Superintendent's recommendation for the

appointment of a coordinator of compensatory education communication skills was again defeated by a vote of one aye and five nays, with three members absent. Immediately thereafter Board member Potkay moved to change the job description for this position by eliminating the requirement for a master's degree, and to readvertize the position. This motion was adopted by an identical vote. (P-38 at pp. 7-9)

At this December 13, 1978 meeting, the Superintendent also made recommendations regarding the abolishment of combined classes and the creation of additional teaching positions. (P-38) The bound volume of the Board's minutes includes Exhibit I, which consists of the Superintendent's instructional and program recommendations. On the list of recommendations under instruction there appears an item U, "Abolishment of Combined Classes." Under the item is a recommendation to abolish a total of 24 combined classes in eleven named schools. Board member Potkay is quoted in the minutes as stating that this item should not be acted upon by the Board because it is unnecessary since the Board had previously given direction in this regard. She stated that the Board should ask administration to report how it has complied with the Board's instruction to separate combined classes utilizing existing staff and facilities. The minutes also show her comment that the administration had presented the Board with information, but an opportunity had not been granted to administration during a conference to discuss the material given to the Board. These comments were followed by a presentation by the Superintendent, assistant superintendent and director of elemen-

tary education. The minutes record that no action was taken by the Board regarding item U, the abolishment of classes. (P-38 at pp. 11, 12)

The Superintendent also recommended the approval of item V, the creation of teaching positions. This recommendation requests that a total of 17 elementary positions be created in 13 elementary schools effective January 2, 1979, in order to meet the Board's mandate to abolish all combined classes. Five of the requested positions in three schools are due to excess pupil enrollments. The minutes of the December 13, 1978 meeting state that there was considerable discussion regarding this recommendation, after which the motion was unanimously defeated by roll call vote. (P-38 at p. 12) The Superintendent's instructional recommendations, Exhibit I in the bound volume of Board minutes, also states under the recommendation for creating new teaching positions, item V, "See no combined classes report." A search of the bound volume of the Board's minutes discloses that this report was not included in the documents which comprise the record of the December 13, 1978 meeting.

After the recommendation for creating new teaching positions was defeated, the minutes show the following comment by the Superintendent:

> "Mr. President and members of the Board, the Superintendent and his administrative staff need some direction from the Board as to what now does the Board want the administration to do concerning no combined classes. Your vote on item 'V' that was unanimous, that defeated the hiring of 18 or more additional teachers, means that if we keep the pupil-teacher ratio of 30 to 1 then the order for no combined classes cannot possibly go into effect. Now

> the Superintendent asks do you want to put the order into effect to break the pupil-teacher ratio? We are looking for direction. That's for the record: precisely for the record. We have to know what to do." (P-38 at p. 13)

The minutes only state that the Superintendent's comment was followed by a short further discussion on this matter by Board members Lawrence, Potkay, the Board president and the Superintendent. (P-38 at p. 13) The Superintendent's above quoted remark obviously refers to a policy of the Board limiting the enrollment of elementary school classes to 30 pupils.

At this juncture, notice must be taken of litigation which had ensued between the Trenton Education Association, hereinafter "Association," and the Board, in regard to the combining of elementary classes and the transfer of teachers. In the case of Trenton Education Association v. Jean F. Emmons et al., 1979 S.L.D. ____ (decided May 17, 1979), the Association contested the abolishment of a first grade class in the Washington School and the transfer of the assigned teacher to another school, as well as the combining of a second and third grade class at the Harrison School. These actions took place on September 27 and 29, 1978, respectively. The Board's action to eliminate all combined or cross-grade classes took place at the special meeting held October 6, 1978, ante. (P-39) The Commissioner's decision in this matter, dated May 17, 1979, declared the two aforementioned actions null and void. It is significant that the Board did not file an Answer to the Petition of Appeal in the above matter and, at its meeting held December 13, 1978, it formally acted to instruct its counsel not to participate in

any further proceedings in the case. (P-38 at p. 25) (See attachment 8 in bound copy of Board minutes of December 13, 1978.)

In an earlier related case, also entitled Trenton Education Association v. Board of Education of the City of Trenton et al., Docket No. 62-2/78, filed February 8, 1978, the Association challenged the Board's action, effective December 8, 1977, eliminating 30 or more teaching staff positions, the combining of elementary classes and the transferring of teachers. The Board has participated in the case and a report of the hearing, entitled an initial decision, has been released to the parties. Neither of the parties has filed exceptions or objections to the report and a decision will be rendered by the Commissioner. One of the principal findings in the report is that cross-grade level or combined classes have for many years been common in the Trenton schools.

At the Board's December 13, 1978 meeting, it adopted a motion regarding personnel policy, which reads as follows:

> "When recommending any person for employment or promotion to any position whether funded by the Board, the government, or other program, the Superintendent of Schools shall bring the names of the three highest ranked candidates from the Screening Committee to the Board. Final determination for employment or promotion is at the discretion of the Board." (Exhibit V, Bound Volume of December 13, 1978 Minutes; P-38 at p. 25)

These minutes state that, prior to the vote, the Board's counsel advised the Board that it was not necessary to read the policy changes publicly. (P-38 at pp. 25-26)

The Board's policy in regard to the powers and duties of the Superintendent of Schools provides, inter alia, that he shall "***recommend to the Board all appointments, assignments, transfers, suspensions and dismissals***." (P-23)

The Board's policy regarding the operation of committees provides that "***the functions of the committees shall be fact-finding, deliberative, and advisory.***" (P-51)

An in-depth study of various functions in the Trenton School District was performed by the Mercer County Chamber of Commerce in July 1976 and a detailed written report was issued in January 1977 (P-49) and discussed with the Board at a meeting held February 16, 1977. (Tr. IV-21) The chairman of the study committee which produced this report testified regarding various aspects of the committee's findings and recommendations, including the district's personnel practices and the use of data processing procedures. The chairman testified that at the time of the study, personnel procedures were placing the Board in the position of acting as both administrator and policy maker, which the committee believed to be an unusual kind of activity for the Board to be involved in in a school district like Trenton. (Tr. IV-34) He further testified that the primary responsibility of the Board should be policy making and seeing that the school system is well run, but not running the system itself. (Tr. IV-36)

The committee's report stated the concern that the personnel screening function is a work duplication and, as carried out by the Board's personnel committee, creates a

dysfunction which may endanger the district's receipt of public monies, which presupposes non-discriminatory hiring, promotions and assignments. (P-49 at p. 47) The report's first recommendation regarding personnel practices is that a review be made of Board committees, their need, responsibility, administration, redundancy, effectiveness and their performance in accordance with recognized legal requirements. (P-49 at p. 48) The report found the personnel office understaffed and devoting virtually all of its time to one task, the preparation of agendas for Board meetings. The report points out that the Board meets twice each month, as does its personnel committee, and therefore the personnel office must prepare four different agendas each month, approximately one each week. The testimony of the chairman, as well as the report, shows that between 275 to 300 copies of agenda are prepared for these purposes. (P-49 at pp. 48-52; Tr. IV-34-36) As a result of this one major activity, characterized as "overpowering" by the chairman, eleven separate responsibilities of the personnel office were not being performed. (P-49 at p. 50; Tr. IV-35) The chairman testified that the practical effect of these circumstances was that the district did not really have a bona fide personnel office, and duties normally within the scope of function of a personnel office had to be performed by other offices in the school district, which he terms a dysfunctional arrangement. (Tr. IV-38) It is clear from the testimony of the chairman, as well as the report, that the district did not have a centralized personnel function. (P-49 at p. 50; Tr. IV-35-38)

The report recommended that the Board only consider personnel matters once a month, as opposed to twice a month. The report also recommended that the Board's personnel committee meet only once a month, thereby reducing the preparation of agendas from four to two. (P-49 at p. 53; Tr. IV-37)

The director of personnel for the district testified that his office was still preparing four agendas each month and, further, that this workload had increased because the entire folder for each applicant for any position, even a secretary or an aide, must be prepared for each Board member. (Tr. IV-115-116) The Chamber of Commerce report recommended that the practice of preparing a folder with the documents of all candidates for each Board member be eliminated. (P-49 at pp. 65, 66) The director testified that his office was still understaffed and could not adequately handle all of its assigned responsibilities. He explained that he often receives between 25 and 40 telephone calls each day which require responses and that additional duties, such as the unemployment compensation program, had been assigned to the office. (Tr. IV-117, 136) The director testified that personnel requirements for special programs such as bilingual teachers, LDTC's or special education are given immediate priority. (Tr. IV-137-138)

The director testified that the Board's involvement in personnel appointments had increased rather than decreased since the Chamber of Commerce report was presented in January 1977. Since that report was issued, he testified the Board has become involved in recruiting, screening and recommending of candidates,

including the nominating and appointing of its own candidates for positions, even though the Board's policy regarding committees states that "***the function of the committees shall be fact-finding, deliberative and advisory.***" (P-51; Tr. IV-122, 124, 126)

The director also testified regarding the Board's policy change which required that three candidates be presented by the Superintendent for each position (P-38), ante. He stated that he was aware of the Board policy which states that employees who will be affected by a policy change will be consulted before such proposed action is taken, but he was not consulted before the aforementioned personnel policy was adopted. (Tr. IV-126)

The director testified that three names had been presented to the Board, in accordance with its new policy, for the position of manager of the food services program. The Board then requested three additional names of candidates for this position, and finally appointed as acting food service manager the candidate who had been ranked seventh in the screening process. (Tr. IV-127-128)

The director also testified that the process of re-screening and repeated recommending of candidates results in a great deal of time being lost and hence is very costly. (Tr. IV-130) For example, the appointment of a coordinator of compensatory education which has been described previously in detail, required over 100 man hours. (Tr. IV-130) He stated that in at least three rescreenings for the positions of coordinators of compensatory education communication skills and computation

skills the same two candidates were in each instance ranked first. He testified that he was forced to interview a candidate who was not qualified in accordance with the requirements of the job description and he suffered personal abuse because he did not comply with the wishes of one Board member. (Tr. IV-128-129)

The director testified that the district had not done any on-site recruitment of candidates since February 1973. At the time when the district was developing a comprehensive bilingual education program, several years ago, he had advised the Board's personnel committee of the importance of on-site recruiting at colleges and universities and had also explained the difficulties involved in recruiting black candidates. He pointed out the importance of establishing good relationships through such recruiting and emphasized that such candidates could not be given promises of employment which were not fulfilled. (Tr. IV-119-121)

The director also testified regarding the effect of the abolishment of the position of director of research, evaluation and development upon the district's efforts to improve the centralization of personnel information through data processing. The Chamber of Commerce report had detailed nine major recommendations regarding the improvement of data processing systems (P-49 at pp. 23-34; Tr. IV-28-33), as well as the need for a centralized personnel record system. (P-49 at pp. 60-61) According to the director, he and the former director of research and evaluation had worked for a year on the development of a process for placing all personnel information for each profes-

sional staff member on one form which could be computerized, thus making a major step toward the centralizing of personnel information, which would have resulted in the saving of a great deal of time. (Tr. IV-144) The abolishment of the position of director of research and evaluation resulted in the abandonment of this project. (Tr. IV-144)

The district's systems analyst, testifying in regard to the school district's data processing operation, stated that the majority of time is spent on payroll and budget related functions. In this respect, the data processing operation had not changed since the Chamber of Commerce report was issued in January 1977. He testified that a capital inventory control system had been started, but was discontinued because of budgetary restraints. (Tr. IV-74, 75)

In regard to personnel matters, the chairman of the Chamber of Commerce team testified that the report recommended that all illegal questions be eliminated from the district's application forms. (P-49 at p. 64; Tr. IV-46) At the time of the hearing in this matter, testimony from the district's director of affirmative action disclosed that proscribed questions still appeared on application forms used by the district, but that he was in the process of revising such forms for compliance with statutory requirements and existing rules. (Tr. IV-88-94)

The hearing examiner has reported in detail the testimony and documentary evidence adduced with respect to the three allegations concerning: (1) efficient administrative

procedures; (2) the 1978-79 school budget; and (3) the employment of teaching staff members. Having carefully reviewed and scrutizined all of the evidence, he finds that:

1. The Board has failed to prepare, adopt and implement efficient administrative policies and procedures pursuant to N.J.A.C. 6:8-4.7.

a. The Board has inordinately interfered with and impeded the adoption of programs and plans including, but not limited to, areas such as compensatory education and affirmative action, to the degree that the operation of the public schools was in obvious disarray for at least six months of the 1978-79 school year, in spite of the fact that the Board was required by law to implement the remedial plan approved by the Commissioner.

b. The evidence in the record, particularly the minutes of the meetings of the Board, shows a pattern of actions which can only be described as devisive, which results in a disunity that is clearly inimical to the interests of the school district.

c. The pattern of the Board's actions over the period covered by the record in this matter shows an almost consistent disregard for recommendations from the district's administrative and supervisory staff as well as officials of the Department of Education.

d. The Board does not operate as a unified public corporation and agency of the State, duly created and empowered by the Legislature to serve the best interests of the pupils, their parents and the community at large. Instead, the

Board operates as a diverse group of individuals of whom some appear to be regularly attempting to directly administer the varied affairs of the school district. Such a state of affairs is clearly contrary to sound educational policy.

e. The Board's minutes which comprise the permanent record of all official actions, and which must be retained in perpetuity, are kept in a manner which conceals, confuses and obfuscates the actual record of the transaction of business. Although nothing in the record supports a conclusion that this is by intention or design, the end result is not acceptable. The bound volumes of the Board's minutes for a typical meeting contain a document of several pages, which is the agenda, listing matters to be considered that are referred to as exhibits with alphabetical designations. Another document is entitled Board action, and a number of these have been referred to as items of evidence in this report. This document makes reference to motions and roll call votes of matters identified by alphabetical and numerical designations. For example, this portion of the minutes may record a motion and vote to approve item K-5, teacher disciplinarian, page 10, attachment C, or to approve item Y, recruiting (bilingual program) attachment D, which was defeated (P-29 at p. 8). It is necessary to pursue each such motion, locate the exhibit and attachment, find the correct page, and read the language of the recommendation in order to determine the actual transaction of business. This is made all the more difficult because specific items are often tabled during one portion of the meeting and then acted upon

later during the same meeting. The confusion resulting from these circumstances was evident during testimony in the course of the hearing, which resulted in the hearing examiner's request for the submission of bound volumes of the Board's minutes. (Tr. II-141-144) Citizens attending a public meeting of the Board would have to be given copies of the agenda and copies of most exhibits and attachments, which in many instances are both numerous and voluminous, in order to even attempt to follow and understand the actions being taken by the Board.

2. The Board clearly failed to document the sufficiency of each appropriation line item of the 1978-79 school budget. The record is abundantly clear that many months of preparation and planning were utilized by staff members in order to reallocate the reduced budget and make available funds necessary for the implementation of the remedial plan. By one action the Board vitiated these extensive efforts and, as late as December 1978, half way through the school year, the Board was exacerbating the problem by insisting upon the dissolution of cross-grade level classes while refusing to approve the creation of teaching positions needed to accomplish such an end.

3. The Board failed to follow proper procedures for employing teaching staff members based upon the needs of the various schools and the district as a whole, pursuant to N.J.A.C. 6:8-4.3 as defined by N.J.A.C. 6:8-1.1.

a. The record in the instant matter is replete with substantive evidence of gross mismanagement by the Board in the employment, transfer and promotion of personnel, including

both professional teaching staff members and noncertificated support services personnel.

b. A review of the substantial evidence leads to the logical conclusion that some members of the Board operate as though their primary responsibility were to serve as patrons for individuals for whom they seek employment, transfer or promotion. In some instances Board members exercise initiative to transfer or promote teaching staff members with no record showing that any consideration was given to the desires of affected individuals or the recommendations of the district's administrative and supervisory staff. At the same time, there exists a consistent pattern of thwarting of administrative recommendations concerning personnel by the device of regularly tabling such recommendations by Board action and/or voting to defeat specific recommendations, without any reasons for such actions being recorded in the official minutes of the Board's proceedings.

c. The Board's recently adopted policy requiring that administrative recommendations for the appointment of personnel consist of three candidates for each position, ante, is inappropriate, inefficient and educationally unsound. Also, the Board has perpetuated the illegal and improper practice of having all individual recommendations regarding both certificated teaching staff members and noncertificated support services personnel identified by race and sex on the Superintendent's instructional report, which is presented to the Board and then incorporated into the bound volumes of the Board's official minutes. See P-30, P-37 and bound volumes as follows: April 27,

1978, Exhibit I, Instructional, pp. 142-160; May 25, 1978, Exhibit H, Instructional, pp. 180-196; July 27, 1978, Exhibit F, Instructional, pp. 160-188 (P-30); August 31, 1978, Exhibit C, Instructional, pp. 150-188 (note: P-32 in evidence is the same document without the code references for sex and race); September 28, 1978, Exhibit H, Instructional, pp. 70-86; October 19, 1978, Exhibit I, Instructional, pp. 46-73; October 24, 1978, Exhibit A, Instructional, pp. 25-48 (P-37); November 16, 1978, Exhibit I, Instructional, pp. 60-79; December 13, 1978, Exhibit I, Instructional, pp. 73-96.

It is clear that a preponderance of credible evidence supports the findings hereinbefore set forth in this portion of the report and, further, that such findings show deficiencies of a magnitude and severity that action of the Commissioner and the State Board are required to institute and order a plan of corrective action.

Before setting forth recommendations for corrective action, the hearing examiner must first address the Motions to Dismiss and Summary Judgment presented by the Board and argued on the last day of hearing and in the Board's Brief. (Tr. V-3-27) At the conclusion of such argument the hearing examiner stated that sufficient evidence had been presented to warrant his submission of a report of factual findings on the allegations set forth in the Order to Show Cause. The Board presented no evidence on its behalf either through witnesses or in documentary form. The Board relied, instead, through cross-examination and summation, on the thesis that the State has the responsibility to

see to it that local school districts fulfill their respective duties in every instance and, should the State through the Department or county office fail to do this, the district should be absolved of any responsibility or fault for such failure to comply. The argument is also made that the Department did not present a prima facie case to justify the ordering of corrective action or, in the alternative, if the evidence is accepted, the whole of such evidence does not justify the remedy of a special agent and the removal of the local authority of the school district.

The Board was not required to present evidence on its behalf in the instant matter and, in fact, chose not to do so. The record, as it stands, clearly shows that the weight of credible evidence supports the findings herein detailed, which prove the truth of the allegations. It must be pointed out that two allegations contained in the Order, dealing with educational programs for gifted and talented pupils and the employment of aides, were not addressed in the hearing and are accordingly dismissed.

For the reasons stated, the hearing examiner recommends that the Commissioner dismiss the Board's Motions to Dismiss and for Summary Judgment.

The law applicable to the instant matter is clear and may be briefly summarized. The provisions of the Public School Education Act of 1975, N.J.S.A. 18A:7A-1 et seq., and related statutes require that the Commissioner annually assess the opera-

tion of local school districts and schools for the purpose of determining the thoroughness and efficiency of their performance. N.J.S.A. 18A:7A-10, 11 He may also inquire into and ascertain the thoroughness and efficiency of operation of any school district or school grades by such means as he shall deem proper. N.J.S.A. 18A:4-24

If the Commissioner determines from the results of the evaluations conducted and reports submitted that the district shall develop a remedial plan for the correction of deficiencies, such a plan, when approved by him, must be implemented in a timely and effective manner, which must be assured by the Commissioner. N.J.S.A. 18A:7A-14; N.J.A.C. 6:8-7.2(a)

If, following a plenary hearing, the Commissioner determines that it is necessary to take corrective action, he shall have the power to order necessary budgetary changes, to order in-service training programs for teaching staff members and other school personnel, or both. If he determines that such corrective actions are insufficient, the Commissioner will recommend a plan of remedial and corrective action for adoption by the State Board. N.J.S.A. 18A:7A-15; N.J.A.C. 6:8-7.2(b), (c) and 7.3. Should the local board fail or refuse to comply with an administrative order issued pursuant to N.J.S.A. 18A:7A-15, the State Board shall apply to the Superior Court for an order directing the local school board to comply. N.J.S.A. 18A:7A-16 Failure on the part of the members of a local board to comply with such an order of the Court would, of course, constitute grounds for seeking individual citations of contempt of court against those board members.

The authority and responsibility of the Commissioner to insure the provision of a thorough and efficient system of public schools has been addressed in detail in previous decisions of the courts of this state and need not be repeated here. See Robinson v. Cahill, 62 N.J. 473 (1973) and 69 N.J. 449 (1976); Jenkins v. Morris Twp. Board of Education, 58 N.J. 483 (1971), Elizabeth Board of Education v. Elizabeth City Council, 55 N.J. 501 (1970); East Brunswick Twp. Board of Education v. East Brunswick Twp. Council, 48 N.J. 94 (1966); and Booker v. Plainfield Board of Education, 45 N.J. 161 (1965).

The hearing examiner will next set forth a recommendation for corrective action. It must first be stated that the deficiencies hereinbefore described are of such a nature and magnitude that a plan limited to effectuating budgetary changes and in-service training for the Trenton School District's personnel would be singularly insufficient. The plan must be substantially broader and provide for an on-going system of close supervision and monitoring.

The plan for corrective action shall include, but not be limited to the following elements:

A. General Supervision

1. The Commissioner shall appoint and assign a monitor general to full time service within the district as a general supervisor of all activities conducted by the school district. The monitor general shall report directly to the Commissioner concerning the total operation of the school district for the 1979-80 and 1980-81 school years.

2. The school district shall assume the cost for the services of the monitor general and two assistants, as well as for secretarial support services, to a maximum of $125,000 per year.

3. The Commissioner shall, as he deems necessary, direct that personnel from the Department and county offices visit the school district to make a thorough inspection of any aspect of the operation of a school or schools, including the operation of various educational programs and the general administration and management of the district. Written reports of such monitoring visits shall be furnished to the Commissioner.

4. The Commissioner shall, as he deems necessary, require the Board to engage the services of an independent auditor, who shall be a certified school accountant, to perform audit functions of one or more of the special programs operated by the Board, the payroll account or general current expense or capital outlay accounts, in order to determine the status of revenues and expenditures and cash receipts and disbursements of the school district's annual budget.

5. The Commissioner shall order the transfer of moneys among the line items of the school district's budget whenever he deems such action necessary for the conduct of a thorough and efficient program of education. In the event that the Commissioner may determine the need for additional fiscal resources for such purpose, he shall certify to the Mercer County Board of Taxation that such additional amount be raised for current expenses or capital outlay by local taxation.

6. No action shall be taken by the Board which would result in increased costs to the school district until the monitor general and the county superintendent have been assured that the necessary budgetary resources are available and have so signified their respective approvals.

B. In-Service Training

1. The Commissioner shall direct the county superintendent to plan and have conducted an in-service training program for the members of the Board in regard to the roles, responsibilities and duties of a local board of education.

2. The Commissioner shall also direct the county superintendent to plan and have conducted appropriate in-service training programs for the district's administrative and supervisory staff and for other teaching staff members, as he shall deem necessary.

C. Affirmative Action Plans

1. The Commissioner shall direct the monitor general and county superintendent to monitor the district's efforts and achievements in implementing the district's affirmative action plans. The district shall be required to submit summary progress reports on a monthly basis regarding such implementation.

D. Special Education

1. The Commissioner shall direct the monitor general and county superintendent to require a thorough review by district and/or Department personnel of the district's progress in complying with all statutes and rules governing the conduct of the program of special education.

2. The monitor general and county superintendent shall be empowered to direct the district's personnel to take all steps necessary to operate a thorough and efficient program of special education.

a. These activities shall include, but not be limited to: completion of the screening, evaluation and classification, where necessary, of all pupils requiring special education services, completion of all reevaluations of previously classified special education pupils, completion of individual educational plans for all classified pupils, placement of all pupils in the most suitable special education program, and the creation of sufficient staff positions to provide adequate special education services. Recommendations regarding budgetary requirements shall be made to the Commissioner as described, ante.

b. Monthly progress reports shall be submitted by district personnel regarding the progress made to comply with all special education laws and rules.

E. Bilingual Education

1. The Commissioner shall direct the monitor general and county superintendent to require a thorough review by district and/or Department personnel of the district's progress in complying with all statutes and rules governing the conduct of the program of bilingual education.

2. The monitor general and county superintendent shall be empowered to direct the district's personnel to take all steps necessary to operate a thorough and efficient program of bilingual education.

a. These activities shall include, but not be limited to: the screening of all eligible pupils, the planning and organizing of adequate numbers and sizes of bilingual classes, the securing of adequate classroom locations for bilingual education and the creation of sufficient staff positions to provide adequate bilingual education services. Recommendations for budgetary requirements shall be made to the Commissioner as previously described.

b. Monthly summary progress reports shall be prepared by district personnel regarding the progress made to comply with all applicable laws and rules.

F. Compensatory Education

1. The Commissioner shall direct the monitor general and county superintendent to require a thorough review by district and/or Department personnel of the district's progress in complying with all laws and rules governing the compensatory education program.

2. The monitor general and county superintendent shall be empowered to direct the district's personnel to take all steps necessary to insure compliance with all requirements for the operation of a program of compensatory education.

a. These activities shall include, but not be limited to, the planning, organization and implementation of an efficient and effective program, the creation of sufficient staff positions to adequately meet the needs of the pupils to be served, and the provision of appropriate supplies and materials

of instruction. Supervision shall be provided to insure the appropriate and total utilization of state aid funds for this program.

b. Monthly summary reports shall be prepared by district personnel regarding the progress made to comply with all pertinent laws and regulations.

G. School Facilities

1. The Commissioner shall direct the monitor general and county superintendent to require district personnel to prepare a comprehensive plan for the provision of needed school facilities, as well as a long-range plan for adequately maintaining and refurbishing all existing schoolhouses. This maintenance plan shall include a detailed schedule of budgetary requirements for no less than a five year period, with annual goals and timelines for completion.

a. The monitor general and county superintendent, with the assistance of Department personnel, shall survey all existing school facilities to determine both emergency needs and those minor items which may be corrected forthwith.

b. Recommendations for necessary budgetary allocations shall be made to the Commissioner, ante.

c. Progress reports shall be prepared in summary form by district personnel regarding the planning for and maintaining of all school facilities.

H. Personnel Functions

1. The Commissioner shall direct the monitor general and county superintendent to require district personnel

to formulate adequate plans for the staffing of all educational programs in the district. Such plans shall provide for the establishment of required positions and shall include professional methods of advertising positions, recruiting of candidates, thorough screening and interviewing of candidates, and preparation of recommendations for appointments. Transfers of personnel, where applicable and necessary for the implementation of educational programs, shall also be recommended in such planning.

2. The monitor general and county superintendent shall review all personnel staffing recommendations and signify in writing that such recommendations are necessary, have been adequately processed and are supported by budgetary appropriations.

3. Such personnel recommendations shall be presented to the Board for formal approval. The Board shall not be permitted to table such recommendations, but shall conduct a recorded roll call vote upon them as required by law. If any Board member wishes to oppose such recommendations, he/she shall state such objection which shall be recorded in the minutes of the meeting. No recommendation of personnel shall be identified by any code designating sex and/or race.

a. No recommendations for the appointment, transfer or promotion of certificated support service personnel shall be made by members of the Board.

b. The Commissioner shall declare null and void the Board's policy requiring the recommendation of three candidates for each position of employment.

c. The Board shall consider personnel matters only once each month as a committee of the whole.

d. The Board's personnel committee shall be dissolved and shall cease to function.

4. In the event that the Board shall fail to approve properly presented personnel recommendations, without good and sufficient reason in the judgment of the Commissioner, he shall take appropriate action to secure compliance with this provision of the corrective action plan.

5. The monitor general and county superintendent shall, with the assistance of Department personnel, review all titles of employment and determine the certification requirements of all unrecognized titles of certificated teaching staff members pursuant to N.J.A.C. 6:11-3.6, and shall take all necessary steps to insure compliance with applicable regulations.

I. Board Operations

1. In order to develop a harmonious and unified working relationship and to insure that all Board members be knowledgeable regarding all facets of the Board's operations, the Commissioner shall order that the Board function only as a committee of the whole. All committees of the Board shall be dissolved and cease to function. The Board shall meet and conduct business as a committee of the whole for all regular meetings, any necessary special meetings, and for a monthly planning meeting if so desired.

2. The format and method of keeping the minutes of Board meetings, including the permanent bound volumes, shall

be changed in accordance with instructions which shall be issued separately from this plan.

J. Annual Report

1. The Commissioner shall require that the district include in its annual report a summary of its progress in meeting the requirements of the corrective action plan.

K. The Commissioner shall submit periodic reports to the State Board regarding the district's compliance with the corrective action plan, including annual summary reports for the 1979-80 and 1980-81 school years. The Commissioner shall also submit, at the request of the State Board, any additional information or interim reports required by the Board.

Since the above plan for corrective action goes beyond budgetary changes and in-service training programs, it is recommended that the Commissioner submit such plan to the State Board for its adoption pursuant to N.J.S.A. 18A:7A-15.

This concludes the report, findings and recommendations of the hearing examiner. In accordance with the provisions of N.J.S.A. 52:14B-10, this report does not become final until 45 days from receipt thereof by the Commissioner, unless he shall act to affirm, modify or reverse during the 45 day period.

October 5, 1979

* * * *

The Commissioner has reviewed the entire record in the instant matter, including the initial decision and the exceptions thereto filed by the Board in accordance with N.J.A.C. 6:24-1.17(b).

The Board alleges in its exceptions that the finding that the district operated a Title VII E.S.E.A. bilingual program in violation of federal regulations is inaccurate. The consultant's report to the acting county superintendent (P-13) clearly shows that the district paid the salaries of some bilingual content area teachers with funds from the Title VII E.S.E.A. program, which is a violation of federal regulations. The summary report (P-13) also indicates that of a total of 955 pupils eligible for the bilingual program, only 502 were being served, leaving a balance of 453 of which 344 were elementary pupils. If the number of pupils receiving only partial services were subtracted from the 502 pupils served, the total number of pupils receiving no program or an inadequate program is even greater than 453. Actually, of the 502 pupils served, only 270 were receiving an adequate program of bilingual education and 232 were receiving partial services (P-13).

The Board states that it was not aware of the existence of the report (P-13) until the time of the hearing. This is of no moment, because this report essentially represents a compilation of pupil statistics from the district's own records, and a summary of the district's efforts to implement the bilingual program. All of this information was known by district personnel prior to the hearing.

The Board also takes exception to the finding regarding the Board's efforts to adopt a revised 1978-79 school budget with balanced revenues and expenditures. The Board did receive a cap waiver in the amount of $783,000, which included $630,000 for textbooks and supplies, $53,000 for in-service training and $100,000 for bilingual education. The Board's resolution, Exhibit Q, adopted on June 29, 1978 inaccurately states that the governing body's review of the defeated budget resulted in a budget decrease in an amount equal to the budget cap increase. The actual reduction made by the governing body was $893,000 as stated in the exceptions, but this amount was $110,000 greater than the approved cap waiver. The hearing officer relied upon the resolution, Exhibit Q, which was not correct.

In its exceptions the Board defends its method of recording its formal minutes on the grounds that this form has been used for decades, and that a researcher can find the actions taken by the Board by perusing the various documents and exhibits which are included in the minute books. The Commissioner agrees with the finding that the method utilized by the Board does conceal, confuse and obfuscate the actual record of the transaction of business.

Having considered the record in its entirety, it is clear that a preponderance of credible evidence supports the findings of the hearing examiner which are set forth in the initial decision. Indeed, the evidence submitted by the State in this matter was totally unrefuted by the Trenton Board of Education. The Commissioner, therefore, denies the Board's Motions

to Dismiss and for Summary Judgment for the reasons set forth in the initial decision. He further adopts, as his own, the findings of the hearing examiner which may be summarized as follows:

SPECIAL EDUCATION PROGRAMS FOR HANDICAPPED CHILDREN

1. The Board failed to provide adequate professional personnel and services for the timely identification, evaluation and classification of handicapped pupils, including required reevaluation of previously classified pupils, as required by statute and regulation. N.J.S.A. 18A:46-6 et seq.; N.J.A.C. 6:28-1.3(b), 1.5(a), 1.6(b) and 1.6(p)

2. The Board failed to develop and implement individual educational plans for all classified handicapped pupils. N.J.A.C. 6:28-1.8

3. The Board failed to provide adequate resource rooms and comprehensive programs for handicapped pupils who do not require placement in self-contained classes. N.J.A.C. 6:28-2.2(c)(1)(iii)

4. The Board failed during the 1978-79 school year to avail the school district of funds for special education purposes in the amount of $145,248.53, even though critical needs in this area had been continually evident, as shown by the Board's own remedial plan. (P-2, P-55)

5. Because of the significant backlog of pending cases within the district, teaching staff members were not referring potentially handicapped pupils to CSTs during the 1978-79 academic year.

6. There has been a lack of adequate supervision of the district's total program of special education, which is a causative factor in its failure to remedy all deficiencies in this particular program.

AFFIRMATIVE ACTION PLANS

The Board failed to adopt and implement an affirmative action plan, approved by the Department, pursuant to N.J.A.C. 6:4-1.3 et seq.

SCHOOL FACILITIES

The Board has failed to provide safe and suitable school facilities in the six elementary schools hereinbefore described, as well as Junior High Schools No. 1, 2, 3 and 5, and Central High School.

In order to remedy the numerous deficiencies found to exist in health and safety provisions, an in-depth study will be required of the school district's maintenance and repair procedures, as well as the amount of funds budgeted for this purpose.

BILINGUAL EDUCATION PROGRAM

The Board's bilingual education program has failed to: (1) meet the limited requirements of the remedial plan for 1978-79; (2) plan adequate budgetary provisions for bilingual teaching staff members for the 1979-80 school year; and (3) provide adequate programs of bilingual education for eligible pupils.

SUBMISSION OF REPORTS

There has been a pattern of failure on the part of the district to submit required reports and documents in a timely manner in conformance with statutory provisions and regulations.

EFFICIENT ADMINISTRATIVE PROCEDURES

SUFFICIENCY OF 1978-79 SCHOOL BUDGET

EMPLOYMENT OF TEACHING STAFF MEMBERS

With regard to the (1) efficient administrative procedures; (2) the 1978-79 school budget; and (3) the employment of teaching staff members:

1. The Board has failed to prepare, adopt and implement efficient administrative policies and procedures pursuant to N.J.A.C. 6:8-4.7.

a. The Board has inordinately interfered with and impeded the adoption of programs and plans including, but not limited to, areas such as compensatory education and affirmative action, to the degree that the operation of the public schools was in obvious disarray for at least six months of the 1978-79 school year, in spite of the fact that the Board was required by law to implement the remedial plan approved by the Commissioner.

b. The evidence in the record, particularly the minutes of the meetings of the Board, shows a pattern of actions which can only be described as devisive, which results in a disunity that is clearly inimical to the interests of the school district.

c. The pattern of the Board's actions over the period covered by the record in this matter shows an almost

consistent disregard for recommendations from the district's administrative and supervisory staff as well as officials of the Department of Education.

d. The Board does not operate as a unified public corporation and agency of the State, duly created and empowered by the Legislature to serve the best interests of the pupils, their parents and the community at large. Instead, the Board operates as a diverse group of individuals of whom some appear to be regularly attempting to directly administer the varied affairs of the school district. Such a state of affairs is clearly contrary to sound educational policy.

e. The Board's minutes which comprise the permanent record of all official actions, and which must be retained in perpetuity, are kept in a manner which conceals, confuses and obfuscates the actual record of the transaction of business.

2. The Board failed to document the sufficiency of each appropriation line item of the 1978-79 school budget. The record is abundantly clear that many months of preparation and planning were utilized by staff members in order to reallocate the reduced budget and make available funds necessary for the implementation of the remedial plan. By one action the Board vitiated these extensive efforts and, as late as December 1978, half way through the school year, the Board was exacerbating the problem by insisting upon the dissolution of cross-grade level classes while refusing to approve the creation of teaching positions needed to accomplish such an end.

3. The Board failed to follow proper procedures for employing teaching staff members based upon the needs of the various schools and the district as a whole, pursuant to N.J.A.C. 6:8-4.3 as defined by N.J.A.C. 6:8-1.1.

a. The record in the instant matter is replete with substantive evidence of gross mismanagement by the Board in the employment, transfer and promotion of personnel, including both professional teaching staff members and noncertificated support services personnel.

b. Some members of the Board operate as though their primary responsibility were to serve as patrons for individuals for whom they seek employment, transfer or promotion. Board members have exercised initiative to transfer or promote teaching staff members with no record showing that any consideration was given to the desires of affected individuals or the recommendations of the district's administrative and supervisory staff. There exists a consistent pattern of thwarting of administrative recommendations concerning personnel by the device of regularly tabling such recommendations by Board action and/or voting to defeat specific recommendations.

c. The Board's recently adopted policy requiring that administrative recommendations for the appointment of personnel consist of three candidates for each position, ante, is inappropriate, inefficient and educationally unsound. Also, the Board has perpetuated the illegal and improper practice of having all individual recommendations regarding both certificated teaching staff members and noncertificated support services

personnel identified by race and sex on the Superintendent's instructional report, which is presented to the Board and then incorporated into the bound volumes of the Board's official minutes. The aforementioned deficiencies are of such magnitude and severity as to require the Commissioner and the State Board of Education to institute and order a plan of corrective action.

The recommended plan for corrective action contained in the initial decision is entirely suitable, given the breadth of the deficiencies and problems which require attention. A maximum of latitude of discretion is properly envisioned in the plan, since a broad range of educational programs, functions and services must be improved. The monitor general shall report directly to the Commissioner and shall provide general supervision, as determined by the Commissioner, of all activities conducted by the school district. The role of the county superintendent as the representative of the Commissioner for the implementation of N.J.S.A. 18A:7A-1 et seq., Public School Education Act of 1975, and other pertinent statutes, is well known by this Board and all other local boards of education. This role will not be changed by the corrective action plan. The county superintendent shall cooperate with, and assist, the monitor general as described in the proposed plan. The Commissioner additionally determines that the school district shall assume costs for the services set forth in the corrective action plan in the amount of $85,000 per year, instead of the $125,000 recommended in the initial decision.

The Commissioner is well aware of the historic policy and statutory plan in this State which vests in local boards of

education discretionary authority for the government and management of the public schools (N.J.S.A. 18A:11-1). This investiture inculcates the principles of home rule into the operation of local school districts by elected and/or appointed citizens who serve on local boards of education.

The role and responsibility of the State in the operation of the public schools has been explained by the Supreme Court on several occasions. In Robinson v. Cahill, (Robinson I) 62 N.J. 473 (1973) the Court discussed the intention of the 1875 amendment to Art. IV, Section 7, para. 6 of the Constitution of 1844 which added the provision that:

> "The legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in this state between the ages of five and eighteen years." (62 N.J. at 508)

This provision is found in almost identical language in the Constitution of 1947, Art. VIII, Section IV, paragraph 1.

The Court stated that:

> "We can be sure the amendment was intended to embody the principle of the 1871 statute that public education for children shall be free. It is plain that the ultimate responsibility for a thorough and efficient education was imposed upon the State. This has never been doubted.[9] ***"

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9 "So in construing the statutes relating to the responsibilities of the State Commissioner of Education, we have repeatedly held it to be his affirmative obligation to see to it that the statutory objectives are met, and this on the premise that the Constitution having placed the responsibility on the State, the statutes should be read to mean that the State Commissioner shall see to it that the school districts abide by the mandate in their discharge of the delegated responsibility.***" (62 N.J. at 508, 509)

In Robinson v. Cahill, 69 N.J. 449 (1976), (Robinson V) the Supreme Court reviewed and construed the provisions of the Public School Education Act of 1975, N.J.S.A. 18A:7A-1 et seq. The Court pointed out that the Act provided a rather elaborate monitoring arrangement with responsibilities shared by State and local authorities (N.J.S.A. 18A:7A-8 to 12). The Court also described the importance of the statutes which provide for corrective action by the Commissioner and the State Board as follows:

> "***Crucial to the success of the legislative plan, as well as to the argument that the statute is facially constitutional, are three particular sections of the Act: N.J.S.A. 18A: 7A-14, 15 and 16. These provisions allocate to the Commissioner of Education and to the State Board of Education a two-fold continuing responsibility: first, to maintain a constant awareness of what elements at any particular time find place in a thorough and efficient system of education, as this concept evolves through the inevitably changing forms that it will take in the years to come; second, to insure that there be ever present, sufficiently competent and dedicated personnel, adequately equipped, to guarantee functional implementation, so that over the years and throughout the State each pupil shall be offered an equal opportunity to receive an education of such excellence as will meet the constitutional standard.
>
> "Pursuant to this allocation of responsibility, the Commissioner is required to review the results of the monitoring and evaluation system mentioned above. Upon detecting an inadequacy he must direct the local board of education to prepare forthwith a plan designed to correct and remedy the failure that has been identified. Such plan will be submitted to him for approval. If approved, the plan will be implemented 'in a timely and effective manner.' N.J.S.A. 18A:7A-14. Should the proposal not be

approved, the Commissioner is directed to order the local board to show cause why there should not be a plenary hearing held before him to determine whether or not corrective action is necessary. If such a hearing is held, and the Commissioner decides that in fact such action is needed, he is then authorized 'to order necessary budget changes within the school district,' or 'in-service training programs for teachers and other school personnel, or both.' N.J.S.A. 18A:7A-15. If these steps in turn prove insufficient, the Commissioner may then formally bring the matter to the attention of the State Board in order that it may take further action. The statutory power and obligation of the Board upon such an occasion is stated thus:

> '***The State board, on determining that the school district is not providing a thorough and efficient education, notwithstanding any other provision of law to the contrary, shall have the power to issue an administrative order specifying a remedial plan to the local board of education, which plan may include budgetary changes or other measures the State board determines to be appropriate.***' [N.J.S.A. 18A:7A-15]

Should the local board fail or refuse to comply with such an administrative order, then the State Board shall apply to the Superior Court by action in lieu of prerogative writ for an order directing such compliance.

"What we have said may be summarized. The Constitution imposes upon the Legislature the obligation to '...provide for the maintenance and support of a thorough and efficient system of free public schools...' The imposition of this duty of course carries with it such power as may be needed to fulfill the obligation. The statutory language quoted and discussed above constitutes a delegation of this power to the State Commissioner of Education as well as to the State Board of Education to see that the constitutional mandate is met. They have,

> for this purpose, been made legislative agents. They have received a vast grant of power and upon them has been placed a great and ongoing responsibility.***"
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> 69 N.J. at 459-461

Thus, it may be seen that the corrective action plan set forth in this matter is in accord with the intendment of the statutes, N.J.S.A. 18A:7A-14, 15, 16, as interpreted by the Supreme Court.

For the reasons hereinbefore stated, the Commissioner hereby adopts the recommended plan for corrective action as his own. The Commissioner will recommend to the State Board that it adopt the corrective action plan, ante, in accordance with N.J.S.A. 18A:7A-15.

COMMISSIONER OF EDUCATION